VISD Employee Handbook

APPENDIX

In a mutual effort to assist all employees in our district, the VISD Human Resources Department has included a copy of ALL VISD Personnel Policies.
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EMPLOYMENT OBJECTIVES

EQUAL EMPLOYMENT OPPORTUNITY

DAA (LEGAL)

NONDISCRIMINATION — IN GENERAL

The District shall not fail or refuse to hire or discharge any individual, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment on the basis of any of the following protected characteristics:

1. Race, color, or national origin;
2. Sex;
3. Religion;
4. Age (applies to individuals who are 40 years of age or older);
5. Disability; or


Title VII proscribes employment practices that are overtly discriminatory (disparate treatment), as well as those that are fair in form but discriminatory in practice (disparate impact). Wards Cove Packing Co. v. Atonio, 490 U.S. 642 (1989)

Disparate treatment (intentional discrimination) occurs when members of a protected group have been denied the same employment, promotion, membership, or other employment opportunities as have been available to other employees or applicants. 29 CFR 1607.11

Disparate impact occurs when an employer uses a particular employment practice that causes a disparate (disproportionate) impact on a protected group and the employer fails to demonstrate that the challenged practice is job-related and consistent with business necessity. 42 U.S.C. 2000e-2(k)(1)(A); Labor Code 21.115, 21.122

JOB QUALIFICATION

The District may take employment actions based on religion, sex, national origin, or age in those certain instances where religion, sex, national origin, or age is a bona fide occupational qualification. 42 U.S.C. 2000e-2(e); 29 U.S.C. 623(f); Labor Code 21.119

EMPLOYMENT POSTINGS

The District shall not print or publish any notice or advertisement relating to District employment that indicates any preference, limitation, specification, or discrimination based on race, color, religion,
HARASSMENT OF EMPLOYEES

The District has an affirmative duty to maintain a working environment free of harassment on the basis of a protected characteristic. 42 U.S.C. 2000e et seq.; 29 CFR 1606.8(a), 1604.11 [See DIA]

RETALIATION

The District may not discriminate against any employee or applicant for employment because the employee or applicant has opposed any unlawful, discriminatory employment practices or participated in the investigation of any complaint related to an unlawful, discriminatory employment practice. 29 U.S.C. 623(d) (ADEA); 42 U.S.C. 2000e-3(a) (Title VII); 34 CFR 100.7(e) (Title VI); 34 CFR 110.34 (Age Act); 42 U.S.C. 12203 (ADA); Jackson v. Birmingham Bd. of Educ., 544 U.S. 167 (2005) (Title IX); Labor Code 21.055 [See DIA]

NOTICES

The District shall post in conspicuous places upon its premises a notice setting forth the information the Equal Employment Opportunity Commission deems appropriate to effectuate the purposes of the anti-discrimination laws. 29 U.S.C. 627; 42 U.S.C. 2000e-10

SECTION 504 NOTICE

A district that employs 15 or more persons shall take appropriate steps to notify applicants and employees, including those with impaired vision or hearing, that it does not discriminate on the basis of disability.

The notice shall state:

1. That the District does not discriminate in employment in its programs and activities; and
2. The identity of the District’s 504 coordinator.

Methods of notification may include:

1. Posting of notices;
2. Publication in newspapers and magazines;
3. Placing notices in District publications; and
4. Distributing memoranda or other written communications.

If the District publishes or uses recruitment materials containing general information that it makes available to applicants or employees, it shall include in those materials a statement of its nondiscrimination policy.

34 CFR 104.8
AGE DISCRIMINATION

The District may take an employment action on the basis of age pursuant to a bona fide seniority system or a bona fide employee benefit plan. However, a bona fide employee benefit plan shall not excuse the failure to hire any individual and no such benefit plan shall require or permit the involuntary retirement of any individual because of age. 29 U.S.C. 623(f); Labor Code 21.102

SEX DISCRIMINATION

GENDER

STEREOTYPES

PREGNANCY

The District may not evaluate employees by assuming or insisting that they match the stereotype associated with their group. Price Waterhouse v. Hopkins, 490 U.S. 228 (1989)

The prohibition against discrimination on the basis of pregnancy, childbirth, or related medical conditions. The District shall treat women affected by pregnancy, childbirth, or related medical conditions the same for all employment-related purposes, including receipt of benefits under fringe benefit programs. 42 U.S.C. 2000e(k); 29 CFR 1604.10; Labor Code 21.106

EQUAL PAY

The District may not pay an employee at a rate less than the rate the District pays employees of the opposite sex for equal work on jobs the performance of which require equal skill, effort, or responsibility and which are performed under similar working conditions. This rule does not apply if the payment is pursuant to a seniority system, a merit system, a system that measures earnings by quantity or quality of production, or a differential based on any other factor other than sex. 29 U.S.C. 206(d); 34 CFR 106.54

RELIGIOUS DISCRIMINATION

The prohibition against discrimination on the basis of religion includes all aspects of religious observances and practice, as well as religious belief, unless the District demonstrates that it is unable to reasonably accommodate an employee’s or prospective employee’s religious observance or practice without undue hardship to the District’s business. "Undue hardship" means more than a de minimus (minimal) cost. 42 U.S.C. 2000e(j); 29 CFR 1605.2; Labor Code 21.108

The District may not substantially burden an employee’s free exercise of religion, unless the burden is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. Civ. Prac. & Rem. Code 110.003

DISABILITY DISCRIMINATION

The District may not discriminate against a qualified individual on the basis of disability in job application procedures, hiring, advancement, or discharge of employees, compensation, job training, and other terms, conditions, and privileges of employment. 42 U.S.C. 12112(a), 12201(g); 29 U.S.C. 794(a); Labor Code 21.051, 21.105
DISCRIMINATION
BASED ON LACK OF
DISABILITY

The Americans with Disabilities Act (ADA) and the Texas Commission on Human Rights Act do not provide a basis for a claim that an individual was subject to discrimination because of the individual’s lack of disability. 42 U.S.C. 12201(g); Labor Code 21.005(c)

In addition, each district that receives assistance under the Individuals with Disabilities Education Act (IDEA) must make positive efforts to employ, and advance in employment, qualified individuals with disabilities in programs assisted by the IDEA. 34 CFR 300.177(b)

DEFINITION OF
DISABILITY

“Disability” means a physical or mental impairment that substantially limits one or more of an individual’s major life activities, a record of having such an impairment, or being regarded as having such an impairment.

The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures, such as medication, medical supplies, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics, hearing aids, mobility devices, oxygen therapy, assistive technology, or learned behavioral or adaptive neurological modifications.

An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

An individual meets the requirement of being “regarded as” having an impairment if the individual establishes that he or she has been subjected to a prohibited action because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity. However, this provision does not apply to impairments that are transitory or minor. A transitory impairment is one with an actual or expected duration of six months or less.

42 U.S.C. 12102(1), (3), (4); 29 CFR 1630.2(g); Labor Code 21.002, 21.0021

OTHER
DEFINITIONS

“Major life activities” include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. “Major life activities” also include the operation of major bodily functions, including functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. 42 U.S.C. 12102(2); Labor Code 21.002
"Qualified individual" means an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that the individual holds or desires. Consideration shall be given to a district's judgment as to what functions of a job are essential. A written job description prepared before advertising or interviewing applicants for the job is evidence of the job's essential functions. 42 U.S.C. 12111(8)

The District shall make reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability, unless the District can demonstrate that the accommodation would impose an undue hardship on the operation of the District. 42 U.S.C. 12112(b)(5); 29 CFR 1630.9; 29 U.S.C. 794; 34 CFR 104.11; Labor Code 21.128 [See DBB regarding medical examinations and inquiries under the Americans with Disabilities Act]

"Reasonable accommodation" includes:

1. Making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

2. Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modification of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

42 U.S.C. 12111(9); 29 CFR 1630.2(o); 34 CFR 104.12(b)

"Undue hardship" means an action requiring significant difficulty or expense when considered in light of the nature and cost of the accommodation needed, overall financial resources of the affected facility and the District, and other factors set out in law. 42 U.S.C. 12111(10); 29 CFR 1630.2(p); 34 CFR 104.12(c)

The District shall not exclude or deny equal jobs or benefits to, or otherwise discriminate against, a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a family, business, social, or other relationship or association. 42 U.S.C. 12112(b)(4); 29 CFR 1630.8; 34 CFR 104.11

The term "qualified individual with a disability" does not include any employee or applicant who is currently engaging in the illegal use of drugs, when the District acts on the basis of such use.
The District is not prohibited from conducting drug testing of employees and applicants for the illegal use of drugs or making employment decisions based on the results of such tests.

42 U.S.C. 12114(c), (d); Labor Code 21.002(6)(A) [See DHE]

The term “qualified individual with a disability” does not include an individual who is an alcoholic and whose current use of alcohol prevents the employee from performing the duties of his or her job or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others.

42 U.S.C. 12114(a); 29 U.S.C. 705(20)(C); 29 CFR 1630.3(a); 28 CFR 35.104; Labor Code 21.002(6)(A)

As a qualification standard, the District may require that an individual not pose a direct threat to the health or safety of other individuals in the workplace. “Direct threat” means a significant risk to the health or safety of the individual or others that cannot be eliminated by reasonable accommodation.

42 U.S.C. 12111(3); 29 CFR 1630.2(r); Labor Code 21.002(6)(B)

The District shall not use qualification standards, employment tests, or other selection criteria based on an individual’s uncorrected vision unless the standard, test, or other selection criteria, as used by the District, is shown to be job-related for the position in question and consistent with business necessity.

42 U.S.C. 12113(c); Labor Code 21.115(b)

The District may refuse to assign or continue to assign an individual to a job involving food handling if the individual has an infectious or communicable disease that is transmitted to others through handling of food.

42 U.S.C. 12113(d); 29 U.S.C. 705(20)(D); 29 CFR 1630.16(e); Labor Code 21.002(6)(B)

The District shall not deny initial employment, reemployment, retention in employment, promotion, or any benefit of employment on the basis of membership in a uniformed service, performance in a uniformed service, application for uniformed service, or obligation to a uniformed service. The District shall not take adverse employment action or discriminate against any person who takes action to enforce protections afforded by the Uniformed Services Employment and Re-employment Rights Act (USERRA).

38 U.S.C. 4311 [See also DECB]

A district that receives federal financial assistance and that employs 15 or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any ac-
tion prohibited by Section 504 of the Rehabilitation Act. 34 CFR 104.7(b), 104.11

AMERICANS WITH DISABILITIES ACT

A district that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by the Americans with Disabilities Act. 28 CFR 35.107, 35.140

TITLE IX

A district that receives federal financial assistance shall adopt and publish grievance procedures providing for prompt and equitable resolution of employee complaints alleging any action prohibited by Title IX. 34 CFR 106.8(b); North Haven Board of Education v. Bell, 456 U.S. 512 (1982)

COMPLIANCE COORDINATOR

The District shall designate at least one employee to coordinate its efforts to comply with Title IX, Section 504, the Age Act, and the ADA. The District shall notify all employees of the name, office address, and telephone number of the employee(s) so designated. 34 CFR 104.7(b), 104.11; 28 CFR 35.107, 35.140; 34 CFR 106.8(b)
The Board establishes the following objective criteria for decisions regarding the hiring, dismissal, reassignment, promotion, and demotion of District personnel. These criteria are not rank-ordered and may be considered in whole or in part in making such decisions.

1. Academic or technical preparation, supported by transcripts.
2. Proper certification for grade level, subject, or assignment, including emergency permits and endorsements for specific subjects, programs, or positions.
3. Experience.
4. Recommendations and references.
5. Appraisals and other performance evaluations.
6. The needs of the District.
As a condition of receiving assistance under Title I, Part A of the ESEA (20 U.S.C. 6301 et seq.), the District shall, at the beginning of each school year, notify the parents of each student attending any school receiving such funds that the parents may request, and the District shall provide the parents on request (and in a timely manner), information regarding the professional qualifications of the student’s classroom teachers, including, at a minimum, the following:

1. Whether the teacher has met state qualification and licensing criteria for the grade levels and subject areas in which the teacher provides instruction.

2. Whether the teacher is teaching under emergency or other provisional status through which state qualification or licensing criteria have been waived.

3. The baccalaureate degree major of the teacher and any other graduate certification or degree held by the teacher, and the field of discipline of the certification or degree.

4. Whether the child is provided services by paraprofessionals and, if so, their qualifications.

A school that receives such federal funds shall also provide to each individual parent timely notice that the parent’s child has been assigned, or has been taught for four or more consecutive weeks by, a teacher who is not highly qualified.

20 U.S.C. 6311(h)(6)

A person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or counselor by the District unless the person holds an appropriate certificate or permit. A person who desires to teach shall present the person’s certificate for filing with the District before the person’s contract with the Board is binding.

A person employed by the District as an educational diagnostician before September 1, 2008, may continue employment with the District without obtaining a certificate or permit as an educational diagnostician so long as the person is employed by that District.

Education Code 21.003(a), .053(a)

An educator who does not hold a valid certificate may not be paid for teaching or work done before the effective date of issuance of a valid certificate. Education Code 21.053(b)

A person may not be employed by the District as an audiologist, occupational therapist, physical therapist, physician, nurse, school
psychologist, associate school psychologist, marriage and family therapist, social worker, or speech language pathologist unless the person is licensed by the state agency that licenses that profession. A person may perform specific services within those professions for the District only if the person holds the appropriate credentials from the appropriate state agency.

A person employed by the District before September 1, 2011, to perform marriage and family therapy is not required to hold a license as a marriage and family therapist as long as the person remains employed by the same district.

**Education Code 21.003(b)**

**SCHOOL DISTRICT TEACHING PERMIT**

The District may issue a school district teaching permit and employ as a teacher a person who does not hold a teaching certificate issued by SBEC, if the person holds a baccalaureate degree. A baccalaureate degree is not required for persons who will teach only career and technology education.

**STATEMENT TO COMMISSIONER**

After employing a person under a school district permit, the District shall promptly send a written statement to the Commissioner. This statement must identify the person, the person’s qualifications as a teacher, and the subject or class the person will teach. The person may teach the subject or class pending action by the Commissioner.

Not later than the 30th day after the Commissioner receives the District’s statement, the Commissioner may inform the District that the person is not qualified to teach. The person may not teach if the Commissioner finds that the person is not qualified. If the Commissioner fails to act before the 30th day after receiving the statement, the District may issue the school district teaching permit and the person may teach the subject or class identified in the statement sent to the Commissioner.

**DURATION OF PERMIT**

A school district teaching permit remains valid unless the District issuing the permit revokes it for cause. A person authorized to teach under a school district teaching permit issued by a particular District may not teach in another school district unless that other district complies with the permit-issuing provisions. [See DK for Emergency Permits]

**Education Code 21.055**
Note: The assignment of a teacher to teach a class for which he or she is not properly certified triggers parent notification requirements in accordance with state and federal laws. See DK.

Pursuant to the No Child Left Behind Act of 2001, each district shall ensure that all teachers teaching in a program supported with funds under Title I, Part A of the ESEA (20 U.S.C. 6301 et seq.) are highly qualified.

The term “core academic subjects” means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

The term “highly qualified”:

1. When used with respect to any public elementary school or secondary school teacher, means the teacher:
   a. Has obtained full state certification as a teacher (including alternative certification); and
   b. Has not had certification or licensure requirements waived on an emergency, temporary, or provisional basis.

2. When used with respect to an elementary school teacher who is new to the profession, means the teacher:
   a. Holds at least a bachelor’s degree; and
   b. Has demonstrated, by passing a rigorous state test, subject knowledge and teaching skills in reading, writing, mathematics, and other areas of the basic elementary school curriculum.

3. When used with respect to a middle or secondary school teacher who is new to the profession, means the teacher:
   a. Holds at least a bachelor’s degree; and
   b. Has demonstrated a high level of competency in each of the academic subjects in which the teacher teaches by:
      (1) Passing a rigorous state academic subject test in each of the academic subjects in which the teacher teaches; or
      (2) Successful completion, in each of the academic subjects in which the teacher teaches, of an academic major, a graduate degree, coursework
equivalent to an undergraduate academic major, or advanced certification or credentialing.

**EXISTING TEACHER**

4. When used with respect to an elementary, middle, or secondary school teacher who is not new to the profession, means the teacher holds at least a bachelor’s degree and:

   a. Has met the applicable standard as detailed above for new teachers; or

   b. Demonstrates competence in all academic subjects in which the teacher teaches based on a high objective uniform state standard of evaluation.

   **20 U.S.C. 6319(a)(1), 7801(23)**

**SPECIAL EDUCATION PROGRAM**

The term “highly qualified,” when used with respect to a special education teacher, means the teacher meets the above requirements, as applicable, and:

**CERTIFICATION AND EDUCATION**

1. Has obtained full state certification as a special education teacher (including alternative certification);

2. Has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

3. Holds at least a bachelor’s degree.

**SUBJECT MATTER COMPETENCY**

Special education teachers who teach alternative achievement standards or who teach two or more core academic subjects exclusively to children with disabilities must also demonstrate subject matter competence as set forth below:

**ALTERNATIVE ACHIEVEMENT STANDARDS**

1. New and existing special education teachers who teach core academic subjects exclusively to children who are assessed against alternate achievement standards may:

   a. Meet the applicable requirements for any new or existing elementary, middle, or secondary teacher; or

   b. In the case of instruction above the elementary level, demonstrate subject matter knowledge appropriate to the level of instruction being provided, as determined by the state, needed to effectively teach to those standards.

**TWO OR MORE CORE ACADEMIC SUBJECTS**

2. A special education teacher who teaches two or more core academic subjects exclusively to children with disabilities may either:

   a. Meet the applicable requirements for any new or existing elementary, middle, or secondary school teacher;
b. In the case of an existing teacher, demonstrate competence in all core academic subjects in which the teacher teaches in the same manner as is required for any other existing elementary, middle, or secondary school teacher. This may include a single, high objective uniform state standard of evaluation covering multiple subjects; or

c. In the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, the teacher may demonstrate competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an existing elementary, middle, or secondary school teacher. This may include a single, high objective uniform state standard of evaluation covering multiple subjects. The teacher must demonstrate competence under this section not later than two years after the date of employment.

20 U.S.C. 1401(10)

PARAPROFESSIONAL EMPLOYEES

CERTIFICATION

EDUCATIONAL AIDS

Each district receiving assistance under Title I, Part A of the ESEA shall ensure that all paraprofessionals working in a program supported with those funds shall:

1. Be assigned only duties consistent with 20 U.S.C. 6319(g).

2. Regardless of the paraprofessionals’ hiring date, have earned a secondary school diploma or its recognized equivalent.

3. If hired after January 8, 2002, have one of the following credentials:

a. Completed at least 2 years of study at an institution of higher education;

b. Obtained an associate’s (or higher) degree; or

c. Met a rigorous standard of quality and can demonstrate, through a formal state or local academic assessment:

   (1) Knowledge of, and the ability to assist in instructing, reading, writing, and mathematics; or
(2) Knowledge of, and the ability to assist in instructing, reading readiness, writing readiness, and mathematics readiness, as appropriate.

Receipt of a high school diploma is not sufficient to satisfy the formal academic assessment requirement.

EXCEPTIONS

The HIGHER EDUCATION OR COMPETENCY TEST requirements above shall not apply to a paraprofessional:

1. Who is proficient in English and a language other than English and who provides services primarily to enhance the participation of children in programs under Title I, Part A by acting as a translator; or

2. Whose duties consist solely of conducting parental involvement activities.

20 U.S.C. 6319

CPR AND FIRST AID CERTIFICATION

A District employee who serves as head director of a school marching band, head coach, or chief sponsor of an extracurricular athletic activity (including cheerleading) that is sponsored or sanctioned by the District or UIL must maintain and submit to the District proof of current certification in first aid and cardiopulmonary resuscitation issued by the American Red Cross, the American Heart Association, or another organization that provides equivalent training and certification. The District shall adopt procedures for administering this requirement, including procedures for the time and manner in which proof of current certification must be submitted. Education Code 33.086

AED CERTIFICATION

Each school nurse, assistant school nurse, athletic coach or sponsor, physical education instructor, marching band director, cheerleading coach, and any other employee specified by the Commissioner must receive and maintain certification in the use of an AED from the American Heart Association, the American Red Cross, or a similar nationally recognized association. Education Code 22.902 [See DMA]

SCHOOL BUS DRIVERS

For purposes of the following provisions, a “school bus driver” is a driver transporting school children and/or school personnel on routes to and from school or on a school-related activity trip while operating a multifunction school activity bus, school activity bus, or school bus. 37 TAC 14.1 [See CNA]

At a minimum, to become employed and maintain employment status as a school bus driver, a person must meet the following requirements:
1. Be at least 18 years old.

2. Possess a valid driver's license designating a class appropriate (with applicable endorsement, if commercial driver license) for the gross vehicle weight rating and manufacturer's designed passenger capacity of the vehicle to be operated.

3. Meet the medical qualifications specified by the Department of Public Safety (DPS) at 37 TAC 14.12. [See DBB]

4. Maintain an acceptable driving record in accordance with the minimum standards established by the DPS at 37 TAC 14.14.

5. Maintain an acceptable criminal history record, secured from any law enforcement agency or criminal justice agency, and reviewed in accordance with the provisions of Education Code Chapter 22. [See DBAA]

6. Possess a valid Texas School Bus Driver Safety Training Certificate, as specified at 37 TAC 14.35 or a valid Enrollment Certificate, as specified at 37 TAC 14.36.

Pre-Employment Inquiries

An applicant for employment as a school bus driver must disclose to the District:

1. Any violations of motor vehicle laws or ordinances (other than parking violations) of which the applicant was convicted or forfeited bond or collateral during the three years preceding the date the application is submitted;

2. Any serious traffic violations, as defined by Transportation Code 522.003(25), of which the applicant was convicted during the ten years preceding the date the application is submitted; and

3. Any suspension, revocation, or cancellation of driving privilege that the applicant has ever received.

The District shall make an inquiry into the applicant's complete driving record, with DPS and with any state in which the applicant held a motor vehicle operator's license or permit within the past seven years. If no previous driving record is found to exist, the District must document its efforts to obtain such information and certify that no previous driving record exists for the individual.

The District shall review the applicant's driving record to determine whether that person meets minimum requirements, as described at 37 TAC 14.14(d) (penalty points for convictions of traffic law violations and crash involvements).

37 TAC 14.14(b)
ANNUAL EVALUATION

The District shall, at least once every twelve months, make an inquiry into the complete driving record of each school bus driver it employs, with DPS and with any state in which the individual held a motor vehicle operator’s license or permit during that time period. The District shall review the driving record to determine whether the individual meets the minimum requirements described at 37 TAC 14.14(d) (penalty points for convictions of traffic law violations and crash involvements). Trans. Code 521.022(d); 37 TAC 14.14(c)

DISQUALIFICATION

Any person who has accumulated ten or more penalty points shall be considered ineligible to transport students until such time as he or she may become qualified. A school bus driver who receives notice that his or her license, permit, or privilege to operate a motor vehicle has been revoked, suspended, or withdrawn shall notify the District of the contents of the notice before the end of the business day following the day the driver received it. The District shall not permit a disqualified driver to drive a school bus, school activity bus, or multifunction school activity bus. 37 TAC 14.14(g)

EMPLOYEE RECORDS

The following records on professional personnel must be readily available for review by the Commissioner:

1. Credentials (certificate or license);
2. Service record(s) and any attachments;
3. Contract;
4. Teaching schedule or other assignment record; and
5. Absence from duty reports.

SERVICE RECORD

The basic document in support of the number of years of professional service claimed for salary increment purposes and both the state’s sick and personal leave program data for all personnel is the service record (form FIN-115) or a similar form containing the same information. It is the responsibility of the issuing district to ensure that service records are true and correct and that all service recorded on the service record was actually performed.

The service record must be validated by a person designated by the District to sign service records. The service record shall be kept on file at the District.

FORMER EMPLOYEES

On request by a classroom teacher, librarian, counselor, or nurse or by the district employing one of those individuals, a district that previously employed the individual shall provide a copy of the individual’s service record to the district employing the individual. The
District must provide the copy not later than the 30th day after the later of:

1. The date the request is made; or

2. The date of the last day of the individual’s service to the District.

The original service record, signed by the employee, shall be given to the employee upon request or sent to the next employing district. The District must maintain a legible copy for audit purposes.

_Education Code 21.4031; 19 TAC 153.1021(b), (d)_

With regard to public access to information in personnel records, custodians of such records shall adhere to the requirements of the Public Information Law. _Gov't Code 552_ [See GBA]

Information in a personnel file is excepted from the requirements of the Public Information Law if the disclosure would constitute a clearly unwarranted invasion of personal privacy.

An employee of the District shall choose whether to allow public access to information in the District’s custody that relates to the employee’s home address, home telephone number, emergency contact information, or social security number, or that reveals whether the person has family members.

_Gov’t Code 552.024, .102(a)_

All information in the personnel file of a District employee shall be made available to that employee or the employee’s designated representative as public information is made available under the Public Information Law. An employee or an employee’s authorized representative has a special right of access, beyond the right of the general public, to information held by the District that relates to the employee and that is protected from public disclosure by laws intended to protect the employee’s privacy interests.

The District may not deny to the employee or his or her representative access to information relating to the employee on the grounds that the information is considered confidential by privacy principles under the Public Information Law. The District may assert as grounds for denial of access other provisions of the Public Information Law or other laws that are not intended to protect the employee’s privacy interests.

If the District determines that information in the employee’s records is exempt from disclosure under an exception of Government Code Chapter 552, Subchapter C, other than an exception intended to protect the privacy interest of the requestor or the person whom
the requestor is authorized to represent, it shall submit a written request for a decision to the attorney general before disclosing the information. If a decision is not requested, the District shall release the information to the requestor not later than the tenth day after the request for information is received.

*Gov't Code 552.023, .102(a), .307*
The District shall notify parents of students in classrooms in which the regular teacher is not “highly qualified,” as required by law.

Notification shall not be required, however, when:

1. The home campus teacher of a secondary school student assigned to a DAEP is considered the teacher-of-record; and

2. The home campus teacher:
   a. Is highly qualified,
   b. Assigns and evaluates the student’s coursework,
   c. Provides substantially the same coursework and uses the same grading standards as in the regular classroom,
   d. Has final authority on the coursework grades and the final grade for the course, and
   e. Is regularly available for face-to-face consultation with the student and the DAEP teacher; and

3. The DAEP teacher meets all applicable SBEC certification requirements.

All employees who have earned certificates, endorsements, or degrees of higher rank since the previous school year must file with the Superintendent:

1. An official college transcript showing the highest degree earned and date conferred.

2. Proof of the certificate or endorsement.

The Superintendent or designee shall ensure that contract personnel possess valid credentials before issuing contracts.
DEFINITIONS

“Criminal history clearinghouse” (Clearinghouse) means the electronic clearinghouse and subscription service established by the Department of Public Safety (DPS) to provide criminal history record information to persons entitled to receive that information and to provide updates to such information. A person who is the subject of the criminal history record information requested must consent to the release of the information. Gov’t Code 411.0845(a), (h)

“Criminal history record information” (CHRI) means information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, information, and other formal criminal charges and their dispositions. Gov’t Code 411.082(2)


CERTIFIED PERSONS

The State Board for Educator Certification (SBEC) shall review the NCHRI of a person who is an applicant for or holder of a certificate and who is employed by or is an applicant for employment by the District. Education Code 22.0831(c)

NONCERTIFIED EMPLOYEES

This section applies to a person who is not an applicant for or holder of a certificate from SBEC and who, on or after January 1, 2008, is offered employment by:

1. The District; or
2. A shared services arrangement, if the employee’s or applicant’s duties are or will be performed on school property or at another location where students are regularly present.

[For noncertified employees of a district or shared services arrangement hired before January 1, 2008, see ALL OTHER EMPLOYEES, below.]

INFORMATION TO DPS AND TEA

Before or immediately after employing or securing the services of a person subject to this section, the District shall send or ensure that the person sends to DPS information that DPS requires for obtaining NCHRI, which may include fingerprints and photographs.

The District shall provide TEA with the name of a person to whom this section applies. TEA shall examine the CHRI of the person and notify the District if the person may not be hired or must be discharged under Education Code 22.085.
After the required information is submitted, the person may begin employment, but that employment is conditional upon the review of that person’s CHRI by TEA and must be terminated if TEA makes a determination that the employee or applicant is ineligible for employment.

The District shall obtain all CHRI that relates to a person subject to this section through the Clearinghouse and shall subscribe to the CHRI of that person. The District may require the person to pay any fees related to obtaining the CHRI.

*Education Code 22.0833; 19 TAC 153.1109(d)*

This section applies to a person who is a substitute teacher for the District or a shared services arrangement.

For purposes of the CHRI review requirements, a “substitute teacher” is a teacher who is on call or on a list of approved substitutes to replace a regular teacher and has no regular or guaranteed hours. A substitute teacher may be certified or noncertified.

The District shall send or ensure that a person to whom this section applies sends to DPS information required for obtaining NCHRI, which may include fingerprints and photographs.

The District shall provide TEA with the name of a person to whom this section applies. TEA shall examine the CHRI and certification records of the person and notify the District if the person:

1. May not be hired or must be discharged as provided by Education Code 22.085; or
2. May not be employed as a substitute teacher because the person’s educator certification has been revoked or is suspended.

After the required information is submitted, the person may begin employment, but that employment is conditional upon the review of that person’s CHRI by TEA and must be terminated if TEA makes a determination that the employee or applicant is ineligible for employment.

The District shall obtain all CHRI that relates to a person to whom this section applies through the Clearinghouse. The District may require the person to pay any fees related to obtaining the CHRI.

*Education Code 22.0836; 19 TAC 153.1101(5), 153.1111(d)*

This section applies to a person participating in an internship consisting of student teaching to receive a teaching certificate.
A student teacher may not perform any student teaching until:

1. The student teacher has provided to the District a driver’s license or another form of identification containing the person’s photograph issued by an entity of the United States government; and

2. The District has obtained from DPS all CHRI that relates to a student teacher. The District may also obtain CHRI relating to a student teacher from any other law enforcement agency, criminal justice agency, or private consumer reporting agency. The District may require a student teacher to pay any costs related to obtaining the CHRI.

*Education Code 22.0835*

**COORDINATION OF EFFORTS**

TEA, SBEC, the District, and a shared services arrangement may coordinate as necessary to ensure that criminal history reviews authorized or required under Education Code Chapter 22, Subchapter C are not unnecessarily duplicated. *Education Code 22.0833(h)*

**ALL OTHER EMPLOYEES**

The District shall obtain CHRI that relates to a person who is not subject to an NCHRI review under Education Code Chapter 21, Subchapter C and who is an employee of:

1. The District; or

2. A shared services arrangement, if the employee’s duties are performed on school property or at another location where students are regularly present.

The District may obtain the CHRI from:

1. DPS;

2. A law enforcement or criminal justice agency; or

3. A private consumer reporting agency [see CONSUMER CREDIT REPORTS, below].

*Education Code 22.083(a), (a-1), (c); Gov’t Code 411.097*

**CONFIDENTIALITY OF RECORD**

CHRI that the District obtains from DPS, including any identification information that could reveal the identity of a person about whom CHRI is requested and information that directly or indirectly indicates or implies involvement of a person in the criminal justice system:

1. Is for the exclusive use of the District; and
2. May be disclosed or used by the District only if, and only to the extent, disclosure is authorized or directed by a statute, rule, or order of a court of competent jurisdiction.

For purposes of these confidentiality provisions, “criminal history record” information does not refer to any specific document provided by DPS, but to the information contained, wholly or partly, in a document’s original form or any subsequent form or use.

The District or an individual may not confirm the existence or non-existence of CHRI to any person who is not eligible to receive the information.

Gov't Code 411.084

CHRI obtained by the District, in the original form or any subsequent form, may not be released to any person except the individual who is the subject of the information, TEA, or SBEC, or by court order. The CHRI is not subject to disclosure under Government Code Chapter 552 (Public Information Act).

An employee of the District may request from the District a copy of any CHRI related to that employee that the District has obtained from DPS. The District may charge a fee to provide the information, not to exceed the actual cost of copying the CHRI.

Gov't Code 411.097(d), (f)

DESTRUCTION OF CHRI

The District shall destroy CHRI obtained from DPS on the earlier of:

1. The date the information is used for the authorized purpose; or
2. The first anniversary of the date the information was originally obtained.

Gov't Code 411.097(d)(3)

CONFIDENTIALITY OF INFORMATION OBTAINED FROM APPLICANT OR EMPLOYEE

The District may not release information collected about a person in order to obtain CHRI, including the person’s name, address, phone number, social security number, driver’s license number, other identification number, and fingerprint records, except:

1. To comply with Government Code Chapter 22, Subchapter C (criminal records);
2. By court order; or
3. With the consent of the person who is the subject of the information.
In addition, the information is not subject to disclosure under Government Code Chapter 522 (Public Information Act).

The District shall destroy the information not later than the first anniversary of the date the information is received.

Education Code 22.08391

SBEC NOTIFICATION

The Superintendent shall promptly notify SBEC in writing by filing a report with the TEA staff within seven calendar days of the date the Superintendent obtains or has knowledge of information indicating that an applicant for or holder of a certificate issued by SBEC has a reported criminal history. Education Code 22.087; 19 TAC 249.14(d)(1) [See also DH]

Note: For criminal history record provisions regarding volunteers, see GKG. For provisions on employees of entities that contract with the District, see CJA.

DISCHARGE OF CONVICTED EMPLOYEES

The District shall discharge or refuse to hire an employee or applicant for employment if the District obtains information through a CHRI review that:

1. The employee or applicant has been convicted of:
   a. A felony under Penal Code Title 5;
   b. An offense requiring registration as a sex offender under Code of Criminal Procedure Chapter 62; or
   c. An offense under the laws of another state or federal law that is equivalent to an offense under paragraphs a or b; and

2. At the time the offense occurred, the victim of the offense was under 18 years of age or was enrolled in a public school.

EXCEPTION

However, the District is not required to discharge or refuse to hire an employee or applicant if the person committed an offense under Title 5, Penal Code and:

1. The date of the offense is more than 30 years before:
   a. June 15, 2007, in the case of a person employed by the District as of that date; or
   b. The date the person’s employment will begin, in the case of a person applying for employment with the District after June 15, 2007; and
2. The employee or applicant for employment satisfied all terms of the court order entered on conviction.

CERTIFICATION TO SBEC

Each school year, the Superintendent shall certify to the Commissioner that the District has complied with the above provisions.

SANCTIONS

SBEC may impose a sanction on an educator who does not discharge an employee or refuse to hire an applicant if the educator knows or should have known, through a criminal history record information review, that the employee or applicant has been convicted of an offense described above.

OPTIONAL TERMINATION

The District may discharge an employee if the District obtains information of the employee’s conviction of a felony or misdemeanor involving moral turpitude that the employee did not disclose to SBEC or to the District. An employee so discharged is considered to have been discharged for misconduct for the purposes of Labor Code 207.044 (unemployment compensation).

"Adverse action" includes a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee.

"Consumer report" includes any information from a consumer reporting agency that is used or expected to be used as a factor in establishing the person’s eligibility for employment.

"Consumer reporting agency" is an agency that, for monetary fees, dues, or on a cooperative nonprofit basis, regularly assembles or evaluates consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

"Employment purposes" when used in connection with a consumer report means a report used for the purpose of evaluating a person for employment, promotion, reassignment, or retention as an employee.

"Education Code 22.085 [See DF]

15 U.S.C. 1681a

The District may not procure a consumer report for employment purposes unless:

1. The District has provided the applicant or employee a written disclosure that a consumer report may be obtained for employment purposes; and

2. The applicant or employee has authorized in writing the procurement of the consumer report.
Before taking any adverse action based on the consumer report, the District shall provide the applicant or employee a copy of the consumer report and a written description of the person’s rights under the Fair Credit Reporting Act, as prescribed by the Federal Trade Commission.

15 U.S.C. 1681b(b)(2)

**Note:** The following provisions apply to a district that uses consumer reports.

“Notice of address discrepancy” means a notice sent to a user by a consumer reporting agency that informs the user of a substantial difference between the address for the consumer that the user provided to request the consumer report and the address(es) in the agency’s file for the consumer.

The District must develop and implement reasonable policies and procedures designed to enable the District, when it receives a notice of address discrepancy, to form a reasonable belief that a consumer report relates to the consumer about whom it has requested the report.

If the District regularly and in the ordinary course of business furnishes information to the consumer reporting agency from which it received the notice of address discrepancy, the District must also develop and implement reasonable policies and procedures for furnishing an address for the consumer, which the District has reasonably confirmed is accurate, to the consumer reporting agency.

16 CFR 641.1

The District must properly dispose of a consumer report by taking reasonable measures to protect against unauthorized access to or use of the information.

“Dispose” includes discarding or abandoning the consumer report, or selling, donating, or transferring any medium, including computer equipment, upon which the consumer report is stored.

Examples of reasonable measures include:

1. Burning, pulverizing, or shredding papers containing a consumer report so the information cannot practicably be read or reconstructed;

2. Destroying or erasing electronic media containing a consumer report so that the information cannot practicably be read or reconstructed; or
3. After due diligence, entering into and monitoring compliance with a contract with another party engaged in the business of record destruction to dispose of the consumer report.

16 CFR 682.3
SCHOOL BUS DRIVERS

A person shall not drive a school bus, school activity bus, or multifunction school activity bus unless he or she is physically qualified to do so. Each school bus driver shall undergo and successfully complete an annual physical examination in accordance with the requirements of 49 CFR 391.41 and 391.43, which list those physical and mental conditions for which the medical examiner is directed to disqualify an applicant. A driver shall not operate a school bus, school activity bus, or multifunction school activity bus unless he or she has in his or her possession the original, or photographic copy, of the medical examiner’s certificate stating that the driver is physically qualified to drive a school bus, school activity bus, or multifunction school activity bus. Trans. Code 521.022; 37 TAC 14.12

A person disqualified on the basis of the medical examination may request special consideration in accordance with 37 TAC 14.13.

DEFINITIONS

The definitions related to individuals with disabilities and exceptions to those definitions included in policy DAA shall be used in applying and interpreting this policy and any (LOCAL) policy adopted in conjunction with this policy.

BLOODBORNE PATHOGEN CONTROL

A district that employs employees who provide services in a public or private facility providing health care-related services, including a home health-care organization, or who otherwise have a risk of exposure to blood or other material potentially containing bloodborne pathogens in connection with exposure to sharps shall comply with the minimum standards set by the Texas Department of State Health Services (TDSHS). This includes a district that operates a public school health clinic.

‘SHARPS’ DEFINED

“Sharps” means an object used or encountered in a health-care setting that can be reasonably anticipated to penetrate the skin or any other part of the body and to result in an exposure incident, including a needle device, a scalpel, a lancet, a piece of broken glass, a broken capillary tube, an exposed end of a dental wire, or a dental knife, drill, or bur.

MINIMUM STANDARDS

The minimum standards in the TDSHS Bloodborne Pathogens Exposure Control Plan require the District to:

1. Develop, review annually, update as necessary, and document its actions regarding a comprehensive exposure control plan appropriate to the District and its particular facilities;

2. Provide, at District expense, personal protective equipment and Hepatitis B vaccinations to affected employees, and if an employee declines to be vaccinated, maintain a record of the employee’s written refusal;
3. Provide to affected employees pre-service and annual refresher training as described in the TDSHS Exposure Control Plan;

4. Record all exposure incidents (e.g., “sticks” by needles or other “sharps”) in a sharps injury log and report the sharps injury to TDSHS on a standardized form; and

5. Provide a post-exposure evaluation and follow up with an employee who has a sharps injury.

*Health and Safety Code 81.301–.307; 25 TAC 96*

**COST OF HEPATITIS TESTING AFTER ACCIDENTAL EXPOSURE**

If certified emergency medical services personnel, a firefighter, a peace officer, or a first responder who renders assistance at the scene of an emergency or during transport to the hospital is accidently exposed to blood or other body fluids of a patient, the hospital to which the patient is transported shall take reasonable steps to test the patient for hepatitis B or hepatitis C. A district that employs the person, or for which the person works as a volunteer in connection with rendering the assistance, is responsible for paying the costs of the test. *Health and Safety Code 81.095(B)*

**PRE-EMPLOYMENT INQUIRIES AND EMPLOYMENT ENTRANCE EXAMINATIONS**

The District shall not conduct a medical examination or make inquiries of a job applicant as to whether such applicant is an individual with a disability or as to the nature or severity of a disability, except as provided below. However, the District is permitted to make pre-employment inquiries into the ability of an applicant to perform job-related functions, such as asking an applicant to describe or demonstrate how, with or without reasonable accommodation, the applicant will be able to perform job-related functions. *42 U.S.C. 12112(d)(2); 29 CFR 1630.14(a)*

The District may require a medical examination (and/or inquiry) after an offer of employment has been made to a job applicant and prior to the beginning of employment duties and may condition the offer on the results of such examination (and/or inquiry), provided all entering employees in the same job category are subjected to such an examination (and/or inquiry) regardless of disability.

The results of an employment entrance medical examination shall be used only to determine the applicant’s ability to perform job-related functions.

*42 U.S.C. 12112(d)(3); 29 CFR 1630.14(b)*

**CONFIDENTIALITY**

Information obtained regarding the medical condition or history of the applicant shall be collected and maintained on separate forms and in separate medical files and shall be treated as confidential medical records. However, supervisors and managers may be in-
formed regarding necessary restrictions on the employee’s work or duties and necessary accommodation; first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment. *29 CFR 1630.14(b)(c)*

**EXAMINATION DURING EMPLOYMENT**

The District may require a medical examination (and/or inquiry) of an employee that is job related and consistent with business necessity and may make inquiries into the ability of an employee to perform job-related functions.

The Board may adopt a policy providing for placing an educator on leave of absence for temporary disability if, in the Board’s judgment and in consultation with a physician who has performed a thorough medical examination of the educator, the educator’s condition interferes with the performance of regular duties. Such a policy must reserve to the educator the right to present to the Board testimony or other information relevant to the educator’s fitness to continue the performance of regular duties. [See also DEC]

The results of an employee’s medical examination shall be used only to determine the employee’s ability to perform job-related functions.

*42 U.S.C. 12112(d)(3)–(4); 29 CFR 1630.14(c); Education Code 21.409(c)*
The Superintendent or designee may require an employee to undergo a medical examination if information received from the employee, the employee’s supervisor, or other sources indicates the employee has a physical or mental impairment that:

1. Interferes with the employee’s ability to perform essential job functions; or

2. Poses a direct threat to the health or safety of the employee or others. A communicable or other infectious disease may constitute a direct threat.

The District may designate the physician to perform the examination. If the District designates the physician, the District shall pay the cost of the examination. The District may place the employee on paid administrative leave while awaiting results of the examination and evaluating the results.

Based on the results of the examination, the Superintendent or designee shall determine whether the employee has an impairment. If so, the Superintendent or designee shall determine whether the impairment interferes with the employee’s ability to perform essential job functions or poses a direct threat. If not, the employee shall be returned to his or her job position.

If the impairment does interfere with the employee’s ability to perform essential job functions or poses a direct threat, the Superintendent or designee shall determine whether the employee has a disability and, if so, whether the disability requires reasonable accommodation, including the use of available leave. The granting of additional unpaid leave may be a reasonable accommodation in some circumstances. If the employee does not have a disability, the Superintendent or designee shall evaluate the employee’s eligibility for leave. [See DEC(LOCAL)]

[See DAA for information on disabilities and reasonable accommodation.]

The Superintendent or designee shall have authority to place an employee on temporary disability leave at the employee’s request, as appropriate, when the employee’s condition interferes with the performance of regular duties.

Based on the Superintendent’s recommendation that an employee be involuntarily placed on temporary disability leave, the Board shall place an employee on temporary disability leave if the Board determines, in consultation with the physician who performed the
medical examination, that the educator’s condition interferes with the performance of regular duties.

[See DEC(LEGAL)]

OTHER REQUIREMENTS

Employees with communicable diseases shall follow recommendations of public health officials regarding contact with students and other employees. Food service workers shall comply with health requirements established by city, county, and state health authorities. Bus drivers shall comply with legal requirements. [See DBA]
“Public servant,” for purposes of the following Penal Code provisions, includes a person elected, selected, appointed, employed, or otherwise designated as an officer, employee, or agent of government, even if the person has not yet qualified for office or assumed his or her duties. *Penal Code 1.07(a)(41)(A), (E)*

**Bribery**

1. A public servant shall not intentionally or knowingly offer, confer, agree to confer on another, solicit, accept, or agree to accept a benefit:

   a. As consideration for the public servant's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant.

   b. As consideration for a violation of a duty imposed on the public servant by law.

   c. That is a political contribution as defined by Title 15 of the Election Code or an expenditure made and reported as a lobbying expense in accordance with Government Code, Chapter 305, if the benefit was offered, conferred, solicited, accepted, or agreed to pursuant to an express agreement to take or withhold a specific exercise of official discretion, if such exercise of official discretion would not have been taken or withheld but for the benefit.

   “Benefit” means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct and substantial interest.

   *Penal Code 36.01(3), 36.02*

2. A public servant who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions shall not solicit, accept, or agree to accept any benefit from a person the public servant knows is interested in or likely to become interested in any such transactions of the District. *Penal Code 36.08(d)*

   A public servant who receives an unsolicited benefit that the public servant is prohibited from accepting under this section may donate the benefit to a governmental entity that has the authority to accept the gift or may donate the benefit to a recognized tax exempt charitable organization formed for educational, religious, or scientific purposes. *Penal Code 36.08(i)*

**Exceptions**

“Illegal Gifts to Public Servants” does not apply to:
a. A fee prescribed by law to be received by a public servant or any other benefit to which the public servant is lawfully entitled or for which he or she gives legitimate consideration in a capacity other than as a public servant;

b. A gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient;

c. A benefit to a public servant required to file a statement under Chapter 572, Government Code, or a report under Title 15, Election Code, that is derived from a function in honor or appreciation of the recipient if:

(1) The benefit and the source of any benefit in excess of $50 is reported in the statement; and

(2) The benefit is used solely to defray the expenses that accrue in the performance of duties or activities in connection with the office which are nonreimbursable by the state or political subdivision;

d. A political contribution as defined by Title 15, Election Code;

e. An item with a value of less than $50, excluding cash or a negotiable instrument as described by Business and Commerce Code 3.104;

f. An item issued by a governmental entity that allows the use of property or facilities owned, leased, or operated by the governmental entity; or

g. Food, lodging, transportation, or entertainment accepted as a guest and, if the donee is required by law to report those items, reported by the donee in accordance with that law.

Penal Code 36.10

3. A public servant commits a Class A misdemeanor offense if the public servant solicits, accepts, or agrees to accept an honorarium in consideration for services that the public servant would not have been requested to provide but for the public servant’s official position or duties. However, a public servant is not prohibited from accepting transportation and lodging expenses or meals in connection with a conference or similar event in which the public servant renders services, such as addressing an audience or engaging in a seminar, to
the extent those services are more than merely perfunctory.  
*Penal Code 36.07*

4. A public servant shall not, with intent to obtain a benefit or with intent to harm or defraud another, intentionally or knowingly violate a law relating to the public servant's office or employment, or misuse District property, services, personnel, or any other thing of value, that has come into his or her custody or possession by virtue of his or her office or employment.  
*Penal Code 39.02(a)*

“Law relating to the public servant’s office or employment” means a law that specifically applies to a person acting in the capacity of a public servant and that directly or indirectly imposes a duty on the public servant or governs the conduct of the public servant.  
*Penal Code 39.01(1)*

“Misuse” means to deal with property contrary to:

a. An agreement under which the public servant holds the property;

b. A contract of employment or oath of office of a public servant;

c. A law, including provisions of the General Appropriations Act specifically relating to government property, that prescribes the manner of custody or disposition of the property; or

d. A limited purpose for which the property is delivered or received.  
*Penal Code 39.01(2)*

An administrator or teacher commits an offense if the person receives any commission or rebate on any instructional materials or technological equipment used in the schools with which the person is associated.  
*Education Code 31.152(a)*

An administrator or teacher commits an offense if the person accepts a gift, favor, or service that:

1. Is given to the person or the person’s school;

2. Might reasonably tend to influence the person in the selection of instructional materials or technological equipment; and

3. Could not be lawfully purchased with state instructional material funds.
“Gift, favor, or service” does not include staff development, inservice, or teacher training; or ancillary materials, such as maps or worksheets, that convey information to the student or otherwise contribute to the learning process.

_Education Code 31.152(b)–(d)_

**INSTRUCTIONAL MATERIALS VIOLATIONS — PURCHASE AND DISTRIBUTION**

A person commits a Class C misdemeanor offense if the person knowingly violates any law providing for the purchase or distribution of free instructional materials for the public schools. _Education Code 31.153_

No person shall hold or exercise at the same time more than one civil office of emolument, except for offices listed in the constitutional provision, unless otherwise specifically provided. _Tex. Const., Art. XVI, Sec. 40(a); State v. Pirtle, 887 S.W.2d 291 (Tex. Ct. Crim. App. 1994); Atty. Gen. Op. DM-212 (1993)_

Individuals who receive all or part of their compensation either directly or indirectly from funds of the state of Texas and who are not state officers shall not be barred from serving as members of the governing bodies of school districts (other than those in which they are employed), cities, towns, or other local governmental districts. Such individuals may not receive a salary for serving as members of such governing bodies. _Tex. Const., Art. XVI, Sec. 40(b); Atty. Gen. Op. DM-55 (1991)_

**CONFLICT DISCLOSURE STATEMENT**

The District may extend the requirements of Local Government Code 176.003 and 176.004 [see BBFA] to any employee of the District who has the authority to approve contracts on behalf of the District, including a person designated as the representative of the District for purposes of Local Government Code Chapter 271. The District shall identify each employee made subject to Sections 176.003 and 176.004 and shall provide a list of the identified employees on request to any person. The District may reprimand, suspend, or terminate the employment of an employee who knowingly fails to comply with such requirements.

An employee commits a Class C misdemeanor if the employee knowingly violates the requirements. It is an exception to the application of the above penalty, however, that the employee filed the disclosure statement not later than the seventh business day after the person received notice from the District of the alleged violation.

_Local Gov't Code 176.005_

**DEFINITION OF “CONTRACT”**

“Contract” means a written agreement for the sale or purchase of real property, goods, or services. _Local Gov’t Code 176.001(1-d)_
PERSONAL SERVICES PERFORMED BY SUPERINTENDENT

The Superintendent may not receive any financial benefit for personal services performed by the Superintendent for any business entity that conducts or solicits business with the District. Any financial benefit received by the Superintendent for performing personal services for any other entity, including a school district, open-enrollment charter school, regional education service center, or public or private institution of higher education, must be approved by the Board on a case-by-case basis in an open meeting. The receipt of reimbursement for a reasonable expense is not considered a financial benefit. *Education Code 11.201(e)*

**Note:** See also CBB for requirements when federal funds are involved.
An employee shall disclose to his or her immediate supervisor a personal financial interest, a business interest, or any other obligation or relationship that in any way creates a potential conflict of interest with the proper discharge of assigned duties and responsibilities or with the best interest of the District.

The Superintendent shall file an affidavit with the Board President disclosing a substantial interest, as defined by Local Government Code 171.002, in any business or real property that the Superintendent or any of his or her relatives in the first degree may have.

Any other employee who is in a position to affect a financial decision involving any business entity or real property in which the employee has a substantial interest, as defined by Local Government Code 171.002, shall file an affidavit with the Superintendent; however, the employee shall not be required to file an affidavit for the substantial interest of a relative.

The Superintendent shall be required to file an affidavit disclosing interest in property in accordance with Government Code 553.002.

No employee other than the Superintendent shall be required to file the conflicts disclosure statement, as promulgated by the Texas Ethics Commission and as specified by Local Government Code 176.003–.004.

The Superintendent, as the executive officer of the District, shall provide to the District in a timely manner information necessary for the District’s annual financial management report.

An employee shall not accept or solicit any gift, favor, service, or other benefit that could reasonably be construed to influence the employee’s discharge of assigned duties and responsibilities. [See CAA]

An employee shall not recommend, endorse, or require students to purchase any product, material, or service in which the employee has a financial interest or that is sold by a company that employs or retains the District employee during nonschool hours. No employee shall require students to purchase a specific brand of school supplies if other brands are equal and suitable for the intended instructional purpose.

An employee shall not use his or her position with the District to attempt to sell products or services.

An employee shall disclose in writing to his or her immediate supervisor any outside employment that in any way creates a poten-
An employee shall disclose in writing to his or her immediate supervisor any private tutoring of District students for pay.
See the following pages for forms to be used by employees for disclosing potential conflicts of interest:

Exhibit A: Affidavit Disclosing Substantial Interest in a Business Entity or in Real Property, as defined in Local Government Code 171.002 — 2 pages

Exhibit B: Affidavit Disclosing Interest in Property, under Government Code Chapter 553, Subchapter A — 2 pages

ADDITIONAL DISCLOSURE: The Superintendent and any other employees identified by Board policy as being required to file the conflicts disclosure statement, in accordance with Local Government Code 176.003–.004, may access that form on the Texas Ethics Commission Web site at http://www.ethics.state.tx.us.
EXHIBIT A

AFFIDAVIT DISCLOSING SUBSTANTIAL INTEREST
IN A BUSINESS ENTITY OR IN REAL PROPERTY

STATE OF TEXAS
COUNTY OF VICTORIA

I, _______________________________(name), as an employee of Victoria ISD, make this affidavit and hereby on oath state the following: I have a substantial interest in:

☐ a business entity, as those terms are defined in Local Government Code Sections 171.001–171.002, that would experience a special economic effect distinguishable from its effect on the public by an action of the Board or the District. [See BBFA]

or

☐ real property for which it is reasonably foreseeable that an action of the Board or District will have a special economic effect on the value of the property distinguishable from its effect on the public.

The business entity or real property is (name/address of business or description of property):
________________________________________________________________________.

I _________________________ have a substantial interest in this business entity or real property as follows: (check all that apply)

☐ Ownership of ten percent or more of the voting stock or shares of the business entity.

☐ Ownership of ten percent or more of the fair market value of the business entity.

☐ Ownership of $15,000 or more of the fair market value of the business entity.

☐ Funds received from the business entity exceed ten percent of my gross income for the previous year.

☐ Real property is involved and I have an equitable or legal ownership with a fair market value of at least $2,500.

The statements contained herein are based on my personal knowledge and are true and correct.

Signed this ______ day of ____________________ (month), __________ (year).

Signature of employee ______________________________________
Title ______________________________________
ACKNOWLEDGEMENT

STATE OF TEXAS
COUNTY OF VICTORIA

Sworn to and subscribed before me on this _____ day of ____________________ (month),
____________ (year).

___________________________________, Notary Public in and for the State of Texas

NOTE: This affidavit should be filed with the Superintendent, Board President, or a designee before the Board takes action concerning the business entity or real property.
STATE OF TEXAS  
COUNTY OF VICTORIA

I, _____________________________________________ (name), as Superintendent of Victoria ISD, make this affidavit and hereby on oath state the following:

I have a legal or equitable interest in property to be acquired with public funds, either by purchase or condemnation.

The property is described as follows:
_________________________________________________________________________.

The nature, type, and amount of interest, including but not limited to percentage of ownership, I have in the property is:
_________________________________________________________________________.

The interest was acquired on ___________________________ (date).

I swear that the information in this affidavit is personally known by me to be correct and contains the information required by Section 553.002, Government Code.

Signed this ______ day of ____________________ (month), __________ (year).

Signature of Superintendent ____________________________________________
ACKNOWLEDGEMENT

STATE OF TEXAS
COUNTY OF VICTORIA

BEFORE ME, ______________________________________ (here insert the name and character of the officer administering the oath) on this day personally appeared __________________________________________ (affiant) known to me (or proved to me on the oath of _________________________ or through _________________________ [description of identity card or other document]) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this ______ day of ___________________ (month), _________ (year).

_____________________________________, Notary Public in and for the State of Texas

NOTE: This affidavit should be filed with the county clerk(s) within ten days before the date on which the property is to be acquired, as provided by Government Code 553.002.
In this policy, the term “appoint” includes appointing, confirming the appointment of, and voting to appoint or confirm the appointment of a person.

Except as provided by this policy, a public official may not appoint a person to a position that is to be directly or indirectly compensated from public funds or fees of office if:

1. The person is related to the public official by consanguinity (blood) within the third degree or by affinity (marriage) within the second degree [see below]; or

2. The public official holds the appointment or confirmation authority as a member of a local board and the person is related to another member of the board by blood or marriage within a prohibited degree.


The nepotism law governs the hiring of an individual, whether the employee is hired as an individual or an independent contractor.


In a district located wholly in, or whose largest part is located in, a county with a population of 35,000 or more, if, under the employment policy [see DC], the Board delegates to the Superintendent the final authority to select District personnel:

1. The Superintendent is a public official for purposes of the nepotism prohibitions only with respect to a decision made under that delegation of authority; and

2. Each member of the Board remains subject to the nepotism prohibitions with respect to all District employees.

For purposes of this provision, a person hired by the District before September 1, 2007, is considered to have been in continuous employment [see CONTINUOUS EMPLOYMENT, below] and is not prohibited from continuing employment with the District subject to the abstention requirements.

Education Code 11.1513(f)–(h)

In a district located wholly in, or whose largest part is located in, a county with a population of less than 35,000, to the extent the Board has delegated final hiring authority to the Superintendent to select personnel [see DC], the Superintendent is a “public official” for purposes of the nepotism laws. Atty. Gen. Op. GA-123 (2003) [See BBFB]
Compensation of Prohibited Employee

A public official may not approve an account or draw or authorize the drawing of a warrant or order to pay the compensation of an ineligible person if the official knows the person is ineligible. *Gov't Code 573.083*

Consanguinity

Two persons are related to each other by consanguinity (blood) if one is a descendant of the other or if they share a common ancestor. An adopted child is considered to be a child of the adoptive parents for this purpose. *Gov't Code 573.022*

An individual’s relatives within the third degree by consanguinity are the individual’s:

1. Parent or child (first degree);
2. Brother, sister, grandparent, or grandchild (second degree); and
3. Great-grandparent, great-grandchild, aunt or uncle (who is a sibling of a parent of the person), nephew or niece (who is a child of a brother or sister of the person) (third degree).

*Gov't Code 573.023(c) [See DBE(EXHIBIT)]*

Half-Blood Relatives

There is no distinction under the nepotism statute between half-blood and full-blood relations. Thus, half-blood relationships fall within the same degree as those of the full blood. *Atty. Gen. Op. LO-90-30 (1990)*

Affinity

Two persons are related to each other by affinity (marriage) if they are married to each other or if the spouse of one of the persons is related by consanguinity to the other person.

The ending of a marriage by divorce or the death of a spouse ends relationships by affinity created by that marriage unless a child of the marriage is living, in which case the marriage is considered to continue as long as a child of that marriage lives. This provision applies to a Board member or officer of the District only until the youngest child of the marriage reaches the age of 21 years.

*Gov't Code 573.024*

A husband and wife are related to each other in the first degree by affinity. For other relationships, the degree of affinity is the same as the degree of the underlying relationship by consanguinity. For example, if two persons are related to each other in the second degree by consanguinity, the spouse of one of the persons is related to the other person in the second degree by affinity.

A person’s relatives within the second degree by affinity are:

1. The person’s spouse;
2. Anyone related by consanguinity to the person’s spouse within the first or second degree; and

3. The spouse of anyone related to the person by consanguinity within the first or second degree.

*Gov’t Code 573.025*

**EFFECT OF BOARD MEMBER RESIGNATION**

All public officers shall continue to perform the duties of their offices until their successors shall be duly qualified, i.e., sworn in. Until the vacancy created by a Board member’s resignation is filled by a successor, the Board member continues to serve and have the duties and powers of office, and a relative within a prohibited degree of relationship is barred from employment. *Tex. Const., Art. XVI, Sec. 17; Atty. Gen. Ops. JM-636 (1987), DM-2 (1991), O-6259 (1945)*

**EXCEPTIONS**

**CONTINUOUS EMPLOYMENT ('GRANDFATHER CLAUSE')**

The nepotism prohibitions do not apply to the appointment of a person to a position if the person is employed in the position immediately before the election or appointment of the public official to whom the person is related in a prohibited degree and that prior employment is continuous for at least:

1. Thirty days, if the public official is appointed; or
2. Six months, if the public official is elected.

*Gov’t Code 573.062(a)*

**RETIREES**

A teacher who has retired from a full-time, certified teacher position has broken his or her employment with the District and does not qualify for the continuous-employment exception to the nepotism laws. *Atty. Gen. Op. JC-442 (2001)*

For purposes of calculating the appropriate date for the applicability of the continuous-employment exception, a superintendent with final authority to select personnel is an appointed public official. *Atty. Gen. Op. GA-177 (2004)*

**ABSTENTION**

If an employee continues in a position under this exception, the public official to whom the employee is related in a prohibited degree may not participate in any deliberation or voting on the appointment, reappointment, employment, reemployment, change in status, compensation, or dismissal of the employee, if the action applies only to the employee and is not taken regarding a bona fide class or category of employees. *Gov’t Code 573.062(b)*

A “change in status” includes a reassignment within an organization, whether or not a change in salary level accompanies the reassignment. *Atty. Gen. Op. JC-193 (2000)*
For an action to be “taken with respect to a bona fide category of employees,” the officeholder’s action must be based on objective criteria, which do not allow for the preference or discretion of the officeholder. *Att'y Gen. Op. DM-46 (1991)*

The nepotism prohibitions do not apply to appointment or employment of a substitute teacher. *Gov't Code 573.061*

In a district located wholly in, or whose largest part is located in, a county with a population of less than 35,000, the nepotism prohibitions do not apply to an appointment or employment of a bus driver. *Gov't Code 573.061(4)*

A public official may not appoint a person to a position in which the person’s services are under the public official’s direction or control and that is to be compensated directly or indirectly from public funds or fees of office if:

1. The person is related to another public official within the prohibited degree; and
2. The appointment would be carried out in whole or in partial consideration for the other public official’s appointing a person who is related to the first public official within a prohibited degree.

*Gov't Code 573.044*

The rules against nepotism apply to employees paid with public funds, regardless of the source of those funds. Thus, the rules apply in the case of a teacher paid with funds from a federal grant. *Att'y Gen. L.A. No. 80 (1974)*

An individual who violates the nepotism prohibitions shall be removed from his or her position. *Gov't Code 573.081, .082*

An individual who violates Government Code 573.041 [see NEPOTISM PROHIBITED], 573.062(b) [see CONTINUOUS EMPLOYMENT and ABSTENTION], or 573.083 [see COMPENSATION OF PROHIBITED EMPLOYEE] commits an offense involving official misconduct. *Gov't Code 573.084*
These illustrations depict the relationships that violate the nepotism law.

CONSANGUINITY (Blood) Kinship
Board member is prospective employee’s:

- First Degree: Parent, Child
- Second Degree: Grandparent, Grandchild, Sister/Brother
- Third Degree: Great-Grandparent, Great-Grandchild, Aunt/Uncle, Niece/Nephew

AFFINITY (Marriage) Kinship
Board member’s spouse is the prospective employee:

- First Degree: Parent, Child
- Second Degree: Grandparent, Grandchild, Sister/Brother

OR

Board member’s spouse is prospective employee’s:

OR

Prospective employee’s spouse is the Board member’s:

NOTE: The spouses of two persons related by blood are not by that fact related. The affinity chart supposes only one affinity relationship between the Board member and prospective employee through either of their spouses.
EMPLOYMENT PRACTICES

The Board shall adopt a policy providing for the employment and duties of District personnel. The policy shall provide that:

**SUPERINTENDENT**

1. The Board employs and evaluates the Superintendent;

**SELECTION OF PERSONNEL**

2. The Superintendent has sole authority to make recommendations to the Board regarding the selection of all personnel, except that the Board may delegate final authority for those decisions to the Superintendent [see SUPERINTENDENT RECOMMENDATION, below];

**CAMPUS ASSIGNMENTS**

3. Each principal must approve each teacher or staff appointment to the principal’s campus as provided by Education Code 11.202 [see DK and DP]; and

**JOB POSTINGS**

4. Notice will be provided of vacant positions [see POSTING OF VACANCIES, below].

**EMPLOYEE GRIEVANCES**

5. Each employee has the right to present grievances to the Board. [See GRIEVANCES, below]

*Education Code 11.1513*

**CONTRACT POSITIONS**

The Board shall establish a policy designating specific positions of employment, or categories of positions based on considerations such as length of service, to which continuing contracts or term contracts apply. *Education Code 21.002(c)*

**DELEGATION OF AUTHORITY**

The District’s employment policy may specify the terms of District employment or delegate to the Superintendent the authority to determine the terms of employment with the District. *Education Code 11.1513(c)* [For nepotism implications, see BBFB and DBE]

**INTERNAL AUDITOR**

If the District employs an internal auditor, the Board shall select the internal auditor and the internal auditor shall report directly to the Board. *Education Code 11.170*

**SUPERINTENDENT RECOMMENDATION**

The Board may accept or reject the Superintendent’s recommendation regarding the selection of District personnel and shall include the Board’s acceptance or rejection in the minutes of the Board’s open meeting, in the certified agenda or tape recording of a closed meeting, or in the recording required under Government Code 551.125 or 551.127, as applicable. If the Board rejects the Superintendent’s recommendation, the Superintendent shall make alternative recommendations until the Board accepts a recommendation. *Education Code 11.1513*

**POSTING OF VACANCIES**

The District’s employment policy must provide that not later than the tenth school day before the date on which the District fills a vacant position for which a certificate or license is required as provided by Education Code 21.003 [see DBA], other than a position...
that affects the safety and security of students as determined by the Board, the District must provide to each current District employee:

1. Notice of the position by posting the position on:
   a. A bulletin board at:
      (1) A place convenient to the public in the District's central administrative office, and
      (2) The central administrative office of each campus during any time the office is open; or
   b. The District's Internet Web site, if the District has a Web site; and

2. A reasonable opportunity to apply for the position.

*Education Code 11.1513(d)*

**EXCEPTION**

If, during the school year, the District must fill a vacant position held by a teacher, as defined by Education Code 21.201 [see DCB], in less than ten school days, the District must provide notice of the position in the manner described above as soon as possible after the vacancy occurs. However, the District is not required to provide the notice for ten school days before filling the position or to provide a reasonable opportunity to apply for the position. *Education Code 11.1513(e)*

**GRIEVANCES**

The District's employment policy must provide each employee with the right to present grievances to the Board. The policy may not restrict the ability of an employee to communicate directly with a member of the Board regarding a matter relating to the operation of the District, except that the policy may prohibit ex parte communication relating to:

1. A hearing under Education Code Chapter 21, Subchapter E (Term Contracts) or F (Hearing Examiners); and

2. Another appeal or hearing in which ex parte communication would be inappropriate pending a final decision by the Board.

*Education Code 11.1513(i)–(j) [See DGBA]*

**TRANSFERS**

The District's employment policy may include a provision for providing each current District employee with an opportunity to participate in a process for transferring to another school in or position with the District. *Education Code 11.1513(c)(3) [See DK]*

**CONTRACT EMPLOYEES**

The District shall employ each classroom teacher, principal, librarian, nurse, or counselor under a probationary contract, a continu-
ing contract, or a term contract. The District is not required to employ a person other than these listed employees under a probationary, continuing, or term contract. *Education Code 21.002*

“Classroom teacher” means an educator who is employed by the District and who, not less than an average of four hours each day, teaches in an academic instructional setting or a career and technology instructional setting. The term does not include a teacher’s aide or a full-time administrator. *Education Code 5.001(2)*

### LENGTH OF CONTRACT

A contract between the District and an educator must be for a minimum of ten months of service. An educator employed under a ten-month contract must provide a minimum of 187 days of service. The Commissioner may reduce the number of days of service, but such a reduction by the Commissioner does not reduce an educator’s salary. *Education Code 21.401*

### EDUCATIONAL AIDES

The Board shall establish a plan to encourage the hiring of educational aides who show a willingness to become certified teachers. *Education Code 54.214(f)*

### EMPLOYMENT OF RETIREEES

The District shall file a monthly certified statement of employment of a retiree in the form and manner required by TRS. The District shall inform TRS of changes in status of the District that affect the District’s reporting responsibilities.

The certified statement must include information regarding employees of third party entities if the employees are service or disability retirees who were first employed by the third party entity on or after May 24, 2003, and are performing duties or providing services on behalf of or for the benefit of the District.

An administrator of the District who is responsible for filing the statement, and who knowingly fails to file the statement, commits an offense.

*Gov't Code 824.6022, 825.403(k); 34 TAC 31.2*

### FORMER BOARD MEMBER EMPLOYMENT

A Board member is prohibited from accepting employment with the District until the first anniversary of the date the Board member’s membership on the Board ends. *Education Code 11.063*

### NEW HIRES

The District shall ensure that an employee properly completes section 1—“Employee Information and Verification”—on Form I-9 at the time of hire.

The District must verify employment eligibility, pursuant to the Immigration Reform and Control Act, and complete Form I-9 by the following dates:
1. Within three business days of initial hiring. If the District hires an individual for employment for a duration of less than three business days, the District must verify employment at the time of hire.

The District shall not be deemed to have hired an individual if the individual is continuing in his or her employment and has a reasonable expectation of employment at all times.

When the District rehires an individual, the District may, in lieu of completing a new I-9, inspect a previously completed I-9 executed within three years of the date of rehire, to determine whether the individual is still eligible to work.

2. For an individual whose employment authorization expires, not later than the date of expiration.

*8 CFR 274a.2(b)(1)(ii), (iii), (vii), (viii)*

NEW HIRE REPORTING

The District shall furnish to the Directory of New Hires (Texas Attorney General’s Office) a report that contains the name, address, and social security number of each newly hired employee. The report shall also contain the District’s name, address, and employer identification number.

The District may also provide, at its option, the employee’s date of hire, date of birth, expected salary or wages, and the District’s payroll address for mailing of notice to withhold child support.

The District shall report new hire information on a Form W-4 or an equivalent form, by first class mail, telephonically, electronically, or by magnetic media, as determined by the District and in a format acceptable to the attorney general.

DEADLINE

New hire reports are due:

1. Not later than 20 calendar days after the date the District hires the employee; or

2. In the case of the District transmitting reports magnetically or electronically, by two monthly transmissions (if necessary) not less than 12 days nor more than 16 days apart.

New hire reports shall be considered timely if postmarked by the due date or, if filed electronically, upon receipt by the agency.

PENALTIES

A district that knowingly violates the new hire provisions may be liable for a civil penalty, as set forth at Family Code 234.105.

*42 U.S.C. 653a(b), (c); Family Code 234.101–.105; 1 TAC 55, Subch. I*
SOCIAL SECURITY NUMBERS

The District shall not deny to any individual any right, benefit, or privilege provided by law because of the individual’s refusal to disclose his or her social security number.

EXCEPTIONS

The above provision does not apply to:

1. Any disclosure that is required by federal statute. The United States Internal Revenue Code provides that the social security number issued to an individual for purposes of federal income tax laws shall be used as the identifying number for taxpayers;

2. Any disclosure to the District maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted before such date to verify the identity of an individual; or

3. Any use for the purposes of establishing the identity of individuals affected by any tax, general public assistance, driver’s license, or motor vehicle registration law within the District’s jurisdiction.

STATEMENT OF USES

A district that requests disclosure of a social security number shall inform that individual whether the disclosure is mandatory or voluntary, by what statutory authority such number is solicited, and what uses will be made of it.

**PERSONNEL DUTIES**

The Superintendent shall define the qualifications, duties, and responsibilities of all positions and shall ensure that job descriptions are current and accessible to employees and supervisors.

**POSTING VACANCIES**

The Superintendent or designee shall establish guidelines for advertising employment opportunities and posting notices of vacancies. These guidelines shall advance the Board’s commitment to equal opportunity employment and to recruiting well-qualified candidates. Current District employees may apply for any vacancy for which they have appropriate qualifications.

**APPLICATIONS**

All applicants shall complete the application form supplied by the District. Information on applications shall be confirmed before a contract is offered for a contractual position and before hiring or as soon as possible thereafter for a noncontractual position.

**EMPLOYMENT OF CONTRACTUAL PERSONNEL**

The Superintendent has sole authority to make recommendations to the Board regarding the selection of contractual personnel.

The Board retains final authority for employment of contractual personnel. [See DCA, DCB, DCC, and DCE as appropriate]

**EXCEPTION**

However, the Board has delegated to the Superintendent the authority to hire teachers during the period of time beginning 45 days prior to the first day teachers are required to report at the beginning of the school year, and continuing for 30 calendar days after the first day teachers are required to report. The Superintendent shall provide notification to the Board before hiring any teacher.

**EMPLOYMENT OF NONCONTRACTUAL PERSONNEL**

The Board delegates to the Superintendent final authority to employ and dismiss noncontractual employees on an at-will basis. [See DCD]

**EXIT INTERVIEWS AND EXIT REPORTS**

An exit interview shall be conducted, if possible, and an exit report shall be prepared for every employee who leaves employment with the District based on data received or collected from the exit interviews.
**PERSONS UNDER PROBATIONARY CONTRACTS**

Except as provided below, each of the following persons shall be employed under a probationary contract when the person is employed by the District for the first time or if the person has not been employed by the District for two consecutive school years subsequent to August 28, 1967:

1. Principal.
2. Supervisor.
3. Classroom teacher.
5. Other full-time professional employee who is required to hold a certificate issued under Education Code Chapter 21, Subchapter B.

*Education Code 21.101, 21.102(a)*

**EXCEPTIONS REHIRES**

A person who previously was employed as a teacher by the District, and after at least a two-year lapse in District employment returns to District employment, may be employed under a probationary contract. *Education Code 21.102(a)*

**PRINCIPAL OR CLASSROOM TEACHER**

The District may employ a person as a principal or classroom teacher under a term contract if the person has experience as a public school principal or classroom teacher, respectively, regardless of whether the person is being employed by the District for the first time or whether a probationary contract would otherwise be required under Section 21.102. *Education Code 21.202(b)*

**VOLUNTARY REASSIGNMENT**

A person may be employed under a probationary contract if the person voluntarily accepts an assignment in a new professional capacity that requires a different class of certificate than the class of certificate held by the person in the professional capacity in which the person was previously employed. If the person is returned by the District to the person's previous professional capacity, the person is entitled to be employed under the contractual status held by the person during the previous employment in that capacity. *Education Code 21.102(a-1); 19 TAC 232.2*

**TERM OF CONTRACT**

A probationary contract may not be for a term exceeding one school year.

**MAXIMUM**

A probationary contract may be renewed for two additional one-year periods, for a maximum permissible probationary contract period of three school years, except that the probationary period may not exceed one year for a person who has been employed as a
teacher in public education for at least five of the eight years preceding employment by the District.

EXCEPTION

A probationary contract period may be extended beyond the third consecutive year of employment if, during the third year of the probationary period, the Board determines that it is doubtful whether a continuing contract or a term contract should be given. If the Board makes such a determination, the District may make a probationary contract for a term ending with the fourth consecutive school year.

*Education Code 21.102*
A person who desires to teach in a public school shall present the person’s certificate for filing with the District before the person’s contract with the Board is binding. *Education Code 21.053(a)* [See DCB(LOCAL) for listing of term contract positions]

Except as provided below, before a term contract may be issued, the employee must be employed under a probationary contract.

The District may employ a person as a principal or classroom teacher under a term contract if the person has experience as a public school principal or classroom teacher, respectively, regardless of whether the person is being employed by the District for the first time or whether a probationary contract would otherwise be required under Section 21.102.

*Education Code 21.202* [See DCA]

Except as provided by Education Code 21.352(c), the Board’s employment policies, which must include reasons for not renewing a term contract at the end of a school year, must require a written evaluation of each term contract employee at annual or more frequent intervals. *Education Code 21.203* [See DFBB and DN series]

A term contract must be in writing and include the terms of employment prescribed by Education Code Chapter 21, Subchapter E; the Board may include other provisions in a term contract that are consistent with that subchapter. Each term contract is subject to the approval of the Board.

The Board shall provide each “teacher,” as that term is defined in Education Code 21.201, with a copy of the teacher’s contract.

The Board shall also provide each teacher a copy of the Board’s employment policies upon the teacher’s request. If the District has an Internet Web site, the District shall place the Board’s employment policies on that Web site. At each school in the District, the Board shall make a copy of the Board’s employment policies available for inspection at a reasonable time on request.

*Education Code 21.204(a)–(d)*

Once the probationary period has been completed, the duration of a term contract may not exceed five school years. *Education Code 21.205*

There is no property interest in a term contract beyond its term. *Education Code 21.204(e)*
Term contracts governed by Chapter 21 of the Education Code (educator term contracts) shall be provided to:

1. SBEC-certified employees serving full-time as principals, assistant principals, teachers, counselors, diagnosticians, librarians, and the athletic director; and
2. Full-time registered nurses.

Educator term contracts shall be provided also to persons in the following positions for which the District requires current SBEC certification: assistant superintendents, the personnel director, the director of student services, the curriculum coordinator, the special education director, special education coordinators, and the vocational coordinator.

In addition, educator term contracts shall be provided for the following positions for which neither SBEC nor the District requires current SBEC certification:

1. Accountant,
2. Executive director for budget and finance,
3. Payroll supervisor,
4. Employee benefits coordinator,
5. Purchasing agent,
6. Chief operations officer,
7. Plant maintenance director,
8. Emergency operations director,
9. Maintenance operations coordinator,
10. Maintenance mechanics coordinator,
11. Energy management coordinator,
12. Director of child nutrition,
13. Assistant director of child nutrition,
14. Coordinator for assessment and testing,
15. Social worker,
16. Social service specialist,
17. Nursing coordinator,
18. Truancy coordinator,
19. Parent liaison,
20. Drug prevention coordinator,
21. Juvenile detention coordinator,
22. ROTC coordinator,
23. ROTC assistant,
24. Intramurals coordinator,
25. MIS director,
26. MIS PEIMS specialist,
27. WEB Internet specialist, and
28. Communications specialist.
The employment-at-will doctrine is the law of Texas, under which an employer has no duty to an employee regarding continuation of employment. *Jones v. Legal Copy, Inc.*, 846 S.W.2d 922 [Tex. App.—Houston [1st Dist.] 1993, no writ]

The employment-at-will doctrine places no duties on an employer regarding an employee’s continued employment and thus bars contract and tort claims based on the decision to discharge an employee. *Sabine Pilot Serv., Inc. v. Hauck*, 687 S.W.2d 733 (Tex. 1985)

In Texas, at-will employment is presumed unless shown otherwise. *Gonzales v. Galveston Ind. Sch. Dist.*, 865 F.Supp. 1241 (S.D. Tex. 1994)

Employment for an indefinite term may be terminated at-will and without cause, except as otherwise provided by law. *Garcia v. Reeves County, Texas*, 32 F.3d 200 (5th Cir. 1994); *Irby v. Sullivan*, 737 F.2d 1418 (5th Cir. 1984); *Winters v. Houston Chronicle Pub. Co.*, 795 S.W.2d 723 (Tex. 1990)

**EXCEPTION**

An at-will employee cannot be discharged if the sole reason for the discharge was that the employee refused to perform an illegal act. *Sabine Pilot Serv., Inc. v. Hauck*, 687 S.W.2d 733 (Tex. 1985) [See DG, DGA, DGB for other exceptions]

**NEPOTISM**

A superintendent to whom the Board has delegated final hiring authority to select personnel is a “public official” with appointment authority for purposes of the nepotism laws. *Atty. Gen. Op. GA-123 (2003)* [See DBE]

**DISMISSAL PROCEDURE**

An at-will employment relationship, standing alone without benefit of recognized exception, triggers no due process requirement nor right. *Mott v. Montgomery County*, 882 S.W.2d 635, 638 (Tex. App.—Beaumont 1994, writ denied)

Termination of employment is a condition of work that is a proper subject for the grievance process. *Fibreboard Paper Products Corp. v. National Labor Relations Board*, 379 U.S. 203 (1984); *Sayre v. Mullins*, 681 S.W.2d 25 (Tex. 1984) [See DGBA]

**NOTICE TO THE COMMISSIONER**

See policy DF regarding circumstances under which a certified paraprofessional employee’s dismissal will be reported to the Commissioner.
Personnel employed on an at-will basis include but are not limited to employees in the following categories: paraprofessional employees and auxiliary employees; temporary employees; student workers; and substitute employees.

**ASSIGNMENT AND EVALUATION**
The Superintendent or designee has sole authority to notify employees of assignments, compensation rates, and conditions of employment.

Evaluation of at-will employees shall be conducted by the principal or supervisor in accordance with administrative procedures. [See DN]

**REASONABLE ASSURANCE OF EMPLOYMENT**
At-will employees in positions normally requiring less than 12 months of service annually and who are expected to report to work at the beginning of the following school session shall be provided a letter of reasonable assurance of employment. [See CRF]

**DISMISSAL**
At-will employees may be dismissed at any time for any reason not prohibited by law or for no reason, as determined by the needs of the District. At-will employees who are dismissed shall receive pay through the end of the last day worked.

**APPEAL TO BOARD**
A dismissed employee may request to be heard by the Board in accordance with DGBA(LOCAL).
Note: This policy applies only to employees whose contracts are not governed by Chapter 21 of the Education Code.

**WRITTEN CONTRACT—NON-EDUCATOR**

A contract of employment with the District creates a property interest in the position only for the period of time stated in the contract. Such a contract creates no property interest of any kind beyond the period of time stated in the contract. *Perry v. Sindermann*, 408 U.S. 593 (1972); *Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564 (1972)

**TERMINATION END OF CONTRACT**

The Board may decide by vote or inaction not to offer any employee on a contract not governed by Chapter 21 of the Education Code further employment with the District beyond the term of the contract for any reason or no reason. *Perry v. Sindermann*, 408 U.S. 593 (1972); *Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564 (1972)

**MIDCONTRACT**

An employee may be dismissed for good cause before the completion of the term fixed in his or her contract.

**PROCEDURE**

Before any employee on a contract not governed by Chapter 21 of the Education Code is dismissed, the employee shall be given reasonable notice of the cause or causes for the termination, set out in sufficient detail to fairly enable him or her to show any error that may exist and the names and the nature of the testimony of the witnesses against him.

*Ferguson v. Thomas*, 430 F.2d 852 (5th Cir. 1970)

**HEARING**

The Board may conduct the hearing in open session or in closed session unless the employee requests a public hearing, in which case the hearing shall be open to the public. *Gov't Code 551.074*

**SUSPENSION**

The employee may be suspended with pay pending the outcome of the dismissal hearing. *Moore v. Knowles*, 512 F.2d 72 (5th Cir. 1975)

The employee may be suspended without pay, so long as the suspension is temporary, and the employee receives a due process hearing. *Gilbert v. Homar*, 524 U.S. 924 (1997)
<table>
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<tr>
<th>NON-CHAPTER 21 CONTRACTS</th>
<th>The Board may employ by written contract personnel not eligible for a contract under Chapter 21 of the Education Code. Such contracts shall not be governed by the provisions of Chapter 21 of the Education Code.</th>
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<td>REASONABLE ASSURANCE OF EMPLOYMENT</td>
<td>The District shall provide an employee a letter of reasonable assurance of employment if a new contract is not issued prior to the last working day of the current contract and the employee is reasonably expected to report to work at the beginning of the following academic term.</td>
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<tr>
<td>APPEAL OF EMPLOYMENT ACTIONS</td>
<td>An employee may appeal discharge during the contract period in accordance with DCE(LEGAL).</td>
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<td></td>
<td>An employee whose contract is not reissued at the end of the contract period may appeal to the Board in accordance with DGBA(LOCAL).</td>
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</table>
Unless an exemption applies, the District shall pay each of its employees not less than minimum wage for all hours worked. 29 U.S.C. 206(a)(1)

Unless an exemption applies, the District shall pay an employee not less than one and one-half times the employee’s regular rate of pay for all hours worked in excess of forty in any workweek. 29 U.S.C. 207(a)(1); 29 CFR pt. 778

Rest periods of up to 20 minutes must be counted as hours worked. Coffee breaks or time for snacks are rest periods, not meal periods. 29 CFR 785.18

Bona fide meal periods of 30 minutes or more are not counted as hours worked if the employee is completely relieved from duty. The employee is not relieved from duty if the employee is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his or her desk is working while eating. It is not necessary that an employee be permitted to leave the premises if the employee is otherwise completely freed from duties during the meal period. 29 CFR 785.19

The District shall provide a nonexempt employee a reasonable break to express breast milk, each time the employee needs to express breast milk for her nursing child, for one year after the child’s birth. The District shall provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.

The District is not required to compensate the employee receiving reasonable break time for any work time spent for such purpose.

A district that employs fewer than 50 employees is not subject to these requirements if the requirements would impose an undue hardship by causing the District significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the District. 29 U.S.C. 207(r)

Nonexempt employees may receive, in lieu of overtime compensation, compensatory time off at a rate of not less than one and one-half hours for each hour of overtime work, pursuant to an agreement or understanding arrived at between the employer and employee before the performance of the work. Such agreement or understanding may be informal, such as when an employee works overtime knowing that the employer rewards overtime with compensatory time.
An employee may accrue not more than 240 hours of compensatory time. If the employee’s overtime work included a public safety activity, an emergency response activity, or a seasonal activity, the employee may accrue not more than 480 hours of compensatory time. After the employee has reached these limits, the employee shall be paid overtime compensation for additional overtime work.

Payment for Accrued Time

Compensation paid to an employee for accrued compensatory time shall be paid at the regular rate earned by the employee at the time of payment. An employee who has accrued compensatory time off shall be paid for any unused compensatory time upon separation from employment at the rates set forth at 29 U.S.C. 207(o)(4).

Use

An employee who has requested the use of compensatory time shall be permitted to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the District.

The Fair Labor Standards Act does not prohibit the District from compelling the use of accrued compensatory time.

29 U.S.C. 207(o); Christensen v. Harris County, 529 U.S. 576 (2000); Houston Police Officers’ Union v. City of Houston, 330 F.3d 298 (5th Cir. 2003)

Exempt Employees

The minimum wage and overtime provisions do not apply to any employee employed in a bona fide executive, administrative, or professional capacity. 29 U.S.C. 213(a)(1)

Academic Administrators

The term “employee employed in a bona fide administrative capacity” includes an employee:

1. Compensated for services on a salary or fee basis at a rate of not less than $455 per week exclusive of board, lodging, or other facilities, or on a salary basis that is at least equal to the entrance salary for teachers in the District by which employed; and

2. Whose primary duty is performing administrative functions directly related to academic instruction or training in the District or department or subdivision thereof.

“Performing administrative functions directly related to academic instruction or training” means work related to the academic operations and functions in a school rather than to administration along the lines of general business operations. Such academic administrative functions include operations directly in the field of education. Jobs relating to areas outside the educational field are not within the definition of academic administration.
Employees engaged in academic administrative functions include:

1. The Superintendent or other head of an elementary or secondary school system, and any assistants, responsible for administration of such matters as curriculum, quality and methods of instructing, measuring and testing the learning potential and achievement of students, establishing and maintaining academic and grading standards, and other aspects of the teaching program;

2. The principal and any vice principals responsible for the operation of an elementary or secondary school;

3. Academic counselors who perform work such as administering school testing programs, assisting students with academic problems and advising students concerning degree requirements; and

4. Other employees with similar responsibilities.

Jobs relating to building management and maintenance, jobs relating to the health of the students, and academic staff such as social workers, psychologists, lunch room managers, or dietitians do not perform academic administrative functions, although such employees may qualify for another exemption.

29 CFR 541.204

**SALARY BASIS**

To qualify as an exempt executive, administrative, or professional employee, the employee must be compensated on a salary basis, unless the employee is a teacher. Subject to the exceptions listed in the rule, an employee must receive the full salary for any week in which the employee performs any work, without regard to the number of days or hours worked. A district that makes improper deductions from salary shall lose the exemption if the facts demonstrate that the District did not intend to pay exempt employees on a salary basis. 29 CFR 541.600, .602(a), .603

**PARTIAL-DAY DEDUCTIONS**

A District employee who otherwise meets the salary basis requirements shall not be disqualified from exemption on the basis that the employee is paid according to a pay system established by statute, ordinance, or regulation, or by a policy or practice established pursuant to principles of public accountability, under which the employee accrues personal leave and sick leave and which requires the employee’s pay to be reduced or the employee to be placed on leave without pay for absences for personal reasons or because of illness or injury of less than one workday when accrued leave is not used by an employee because:
1. Permission for its use has not been sought or has been sought and denied;

2. Accrued leave has been exhausted; or

3. The employee chooses to use leave without pay.

Deductions from the pay of a District employee for absences due to a budget-required furlough shall not disqualify the employee from being paid on a salary basis except in the workweek in which the furlough occurs and for which the employee’s pay is accordingly reduced.

29 CFR 541.710

SAFE HARBOR POLICY

If the District has a clearly communicated policy that prohibits improper pay deductions and includes a complaint mechanism, reimburses employees for any improper deductions, and makes a good faith commitment to comply in the future, the District will not lose the deduction unless the District willfully violates the policy by continuing to make improper deductions after receiving employee complaints.

The best evidence of a clearly communicated policy is a written policy that was distributed to employees before the improper pay deductions by, for example, providing a copy of the policy to employees upon hire, publishing the policy in an employee handbook, or publishing the policy on the District’s intranet.

29 CFR 541.603(d)

TEACHERS

The term “employee employed in a bona fide professional capacity” includes any employee with a primary duty of teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in an elementary or secondary school system by which the employee is employed. The salary basis requirements do not apply to teaching professionals.

Exempt teachers include:

1. Regular academic teachers;

2. Teachers of kindergarten or nursery school pupils;

3. Teachers of gifted or disabled children;

4. Teachers of skilled and semi-skilled trades and occupations;

5. Teachers engaged in automobile driving instruction;

6. Home economics teachers; and
7. Vocal or instrumental music instructors.

Those faculty members who are engaged as teachers but also spend a considerable amount of their time in extracurricular activities such as coaching athletic teams or acting as moderators or advisors in such areas as drama, speech, debate, or journalism are engaged in teaching. Such activities are a recognized part of the schools' responsibility in contributing to the educational development of the student.

The possession of an elementary or secondary teacher's certificate provides a clear means of identifying the individuals contemplated as being within the scope of the exemption for teaching professionals. Teachers who possess a teaching certificate qualify for the exemption regardless of the terminology (e.g., permanent, conditional, standard, provisional, temporary, emergency, or unlimited) used by the state to refer to different kinds of certificates. However, a teacher who is not certified may be considered for exemption, provided that such individual is employed as a teacher by the employing school or school system.

29 CFR 541.303

The District shall maintain and preserve payroll or other records for nonexempt employees containing the information required by the regulations under the Fair Labor Standards Act. 29 CFR 516.2(a)

The Texas Payday Law does not apply to the state or a political subdivision. Labor Code 61.003
The Superintendent shall recommend to the Board for approval compensation plans for all District employees. Compensation plans may include wage and salary structures, stipends, benefits, and incentives.

### PAY ADMINISTRATION
The Superintendent shall administer the compensation plans consistent with the budget approved by the Board. The Superintendent or designee shall classify each job title within the compensation plans based on the qualifications and duties of the position. Within these classifications, the Superintendent or designee shall determine appropriate pay for new employees and employees reassigned to different positions.

### ANNUAL PAY INCREASES
The Superintendent shall recommend to the Board an amount for employee pay increases as part of the annual budget. The Superintendent or designee shall determine annual increases for individual employees, within budgeted amounts.

### MID-YEAR PAY INCREASES
A contract employee’s pay shall not be increased after performance on the contract has begun unless there is a change in the employee’s job assignment or duties that warrants additional compensation. Any such changes in pay during the term of the contract shall require Board approval.

### CONTRACT EMPLOYEES
The Superintendent may grant a pay increase to a noncontract employee after duties have begun only when there is a change in the employee’s job assignment or duties, or when an adjustment in the market value of the job warrants additional compensation. The Superintendent shall report any such pay increases to the Board at the next regular meeting.

### NONCONTRACT EMPLOYEES
The Superintendent or designee shall determine the classification of positions or employees as “exempt” or “nonexempt” for purposes of payment of overtime in compliance with the Fair Labor Standards Act (FLSA).

### CLASSIFICATION OF POSITIONS
The District shall pay employees who are exempt from the overtime pay requirements of the FLSA on a salary basis. The salaries of these employees are intended to cover all hours worked, and the District shall not make deductions that are prohibited under the FLSA.

An employee who believes deductions have been made from his or her salary in violation of this policy should bring the matter to the District’s attention, through the District’s complaint policy. [See DGBA] If improper deductions are confirmed, the District will reimburse the employee and take steps to ensure future compliance with the FLSA.
The Superintendent or designee may assign noncontractual supplemental duties to personnel exempt under the FLSA, as needed. [See DK(LOCAL)] The employee shall be compensated for these assignments according to the District’s compensation plans.

**NONEXEMPT**

Nonexempt employees may be compensated on an hourly basis or on a salary basis. Employees who are paid on an hourly basis shall be compensated for all hours worked. Employees who are paid on a salary basis are paid for a 40-hour workweek and do not earn additional pay unless the employee works more than 40 hours.

A nonexempt employee shall have the approval of his or her supervisor before working overtime. An employee who works overtime without prior approval is subject to discipline but shall be compensated in accordance with the FLSA.

**WORKWEEK DEFINED**

For purposes of FLSA compliance, the workweek for District employees shall be 12:00 a.m. Saturday until 11:59 p.m. Friday.

**COMPENSATORY TIME ACCRUAL**

At the District’s option, nonexempt employees may receive compensatory time off, rather than overtime pay, for overtime work. The employee shall be informed in advance if overtime hours will accrue compensatory time rather than pay.

Compensatory time earned by nonexempt employees may not accrue beyond a maximum of 60 hours. If an employee has a balance of more than 60 hours of overtime, the employee will be required to use compensatory time or, at the District’s option, will receive overtime pay.

**USE**

An employee shall use compensatory time within the duty year in which it is earned. If an employee has any unused compensatory time remaining at the end of a fiscal year, the employee shall receive overtime pay.

Compensatory time may be used at either the employee’s or the District’s option. An employee may use compensatory time in accordance with the District’s leave policies and if such use does not unduly disrupt the operations of the District. [See DEC (LOCAL)] The District may require an employee to use compensatory time when in the best interest of the District.
The District shall provide in employment contracts that qualifying employees may receive an incentive payment under the Educator Excellence Award Program/District Awards for Teacher Excellence (DATE) if the District participates in the program. The District shall indicate that any incentive payment distributed is considered a payment for performance and not an entitlement as part of an employee's salary. Education Code 21.415

The DATE is an annual grant program under which the District may receive a grant for the purpose of providing awards to classroom teachers, principals, and other District employees. Funds from the program shall be distributed to each selected school district that submitted an approved local awards plan developed in accordance with Education Code 21.704 and 19 Administrative Code 102.1073(e)(2).

The District must act pursuant to local Board policy for submitting a local awards plan and grant application to TEA. The local awards plan must meet the criteria set forth at 19 Administrative Code 102.1073(e).

The Board’s decision to approve and submit its local awards plan and grant application may not be appealed to the Commissioner.

The District may choose to exclude a teacher or a principal on a selected campus from receiving an award, except involuntarily transferred teachers or principals, or teachers or principals no longer on the selected campus who retired at the end of the school year. The local awards plan must reflect the District policies with regard to such a teacher or principal at the program start date. A decision to exclude certain teachers or principals from receiving an award may not be appealed to the Commissioner.

A local awards plan must provide for notifying teachers and principals eligible to receive awards under the plan of the specific criteria and any formulas on which the awards will be based before the beginning of the period on which the awards will be based.

The District must use at least 60 percent of grant funds to directly award classroom teachers and principals who effectively improve student achievement as determined by meaningful, objective measures (Part I funds). The remaining funds may be used only for the purposes listed at Education Code 21.705.

Annual award amounts should be valued at $3,000 or more, unless otherwise determined by the District planning committee. All eligible educators must have the opportunity to earn minimum awards valued at $1,000 per educator identified under Part I. Local deci-
sions regarding award amounts are final and may not be appealed to the Commissioner.

*Education Code Ch. 21, Subch. O; 19 TAC 102.1073*

**MENTOR TEACHERS**

The District may assign a mentor teacher to each classroom teacher who has less than two years of teaching experience in the subject or grade level to which the teacher is assigned. A teacher assigned as a mentor must:

1. To the extent practicable, teach in the same school;
2. To the extent practicable, teach the same subject or grade level, as applicable; and
3. Meet the qualifications prescribed by Commissioner’s rules.

The Commissioner’s rules must require that a mentor teacher:

1. Complete a research-based mentor and induction training program approved by the Commissioner;
2. Complete a training program provided by the District; and
3. Have at least three complete years of teaching experience with a superior record of assisting students, as a whole, in achieving improvement in student performance.

The District may apply to the Commissioner for funds for a mentor teacher program. The District may use the funds only for providing:

1. Mentor teacher stipends;
2. Scheduled time for mentor teachers to provide mentoring to assigned classroom teachers; and
3. Mentoring support through providers of mentor training.

*Education Code 21.458; 19 TAC 153.1011*

**MASTER TEACHER GRANT PROGRAMS**

The Commissioner shall establish master reading, mathematics, technology, and science teacher grant programs to encourage teachers to become certified as master teachers and to work with other teachers and students to improve student performance. *Education Code 21.410-.413*

**APPLICATION**

The District may apply to the Commissioner for grants for each identified high-need campus to be used to pay year-end stipends to certified master teachers.

**USE OF FUNDS**

Grant funds may be used only for the purpose of paying a year-end stipend to a master teacher whose primary duties are to teach...
PAYMENTS

The Commissioner shall reduce payments to the District proportionately to the extent a teacher does not meet the requirements for a master teacher for the entire school year.

If a teacher qualifies as a master teacher for a partial month, the District’s written policy will determine how the District counts the partial month, for example, as no month served or as an entire month served. Only whole months shall be entered on the application by the District on the teacher’s behalf.

Education Code sections 21.410–.413 do not create a property right to a grant or stipend. A master teacher stipend is not considered in determining whether the District is paying the teacher the minimum monthly salary under Education Code 21.402.

DESIGNATION OF TEACHER

A district that employs more certified master teachers than the number of grants available shall designate which certified master teacher(s) to assign the duties required to receive the state stipends. The designation is based on a written policy adopted by the Board. The District’s decision is final and may not be appealed.

The District may not apportion among teachers a stipend paid with a grant the District receives under this program. The District may use local money to pay additional stipends in amounts determined by the District.

*Education Code 21.410–.413; 19 TAC Ch. 102, Subch. BB*

RETIREMENT INCENTIVES

The District may not offer or provide a financial or other incentive to an employee to encourage the employee to retire from the Teacher Retirement System of Texas. *Education Code 22.007*

ATTENDANCE SUPPLEMENT

The District shall not deny an educator a salary bonus or similar compensation given in whole or in part on the basis of educator attendance because of the educator’s absence from school for observance of a religious holy day observed by a religion whose places of worship are exempt from property taxation under Tax Code 11.20. *Education Code 21.406*
At the end of the school year, a master teacher shall be paid the stipend for any month in which the teacher performed the prescribed duties for more than ten days. [See DBA]

If the number of master teachers exceeds the grants allocated, the District shall first fund the stipends for master teachers in their second or third year in the master program, as required by law. The District shall distribute the remaining funds among newly assigned master teachers based on:

1. Length of time teaching in the subject area.
2. Seniority in the District, as measured from the employee’s most recent date of hire.

The Superintendent shall have authority to submit incentive plans and grant applications for incentive programs to TEA, on behalf of the Board. The incentive plans shall address teacher eligibility, including any exclusions.

[See also DEA regarding stipends for noncontractual supplemental duties.]
The District shall pay each classroom teacher, full-time librarian, full-time counselor, or full-time nurse not less than the minimum monthly salary, based on the employee’s level of experience, specified in Education Code 21.402 and 19 Administrative Code 153.1021.

“Classroom teacher” means an educator who teaches an average of at least four hours per day in an academic or career and technology instructional setting, focusing on the delivery of the Texas Essential Knowledge and Skills, and who holds the relevant certificate from the State Board for Educator Certification (SBEC). Although noninstructional duties do not qualify as teaching, necessary functions related to the educator’s instructional assignment, such as instructional planning and transition between instructional periods, should be applied to creditable classroom time.

“Librarian” means an educator who provides full-time library services and holds the relevant certificate from SBEC.

“Counselor” means an educator who provides full-time counseling and guidance services and holds the relevant certificate from SBEC.

“Nurse” means an educator employed to provide full-time nursing and health-care services and who meets all the requirements to practice as a registered nurse (RN) pursuant to the Nursing Practice Act and the rules and regulations relating to professional nurse education, licensure, and practice and has been issued a license to practice professional nursing in Texas.

“Full-time” means contracted employment for at least ten months (187 days) for 100 percent of the school day, in accordance with the definitions of school day in Education Code 25.082, employment contract in Education Code 21.002, and school year in Education Code 25.081.

19 TAC 153.1022(a)

The Commissioner’s rules determine the experience for which a teacher, librarian, counselor, or nurse is to be given credit in placing the teacher, librarian, counselor, or nurse on the minimum salary schedule. The District shall credit the teacher, librarian, counselor, or nurse for each year of experience, whether or not the years are consecutive. Education Code 21.402(a), .403(c); 19 TAC 153.1022

A teacher or librarian who received a career ladder supplement on August 31, 1993, is entitled to at least the same gross monthly salary the teacher or librarian received for the 1994–95 school year as long as the teacher or librarian is employed by the same district.
In addition, a teacher or librarian who was on level two or three of the career ladder is entitled, as long as he or she is employed by the same district, to placement on the minimum salary schedule according to the guidelines at Education Code 21.403(d).

_Education Code 21.402(f), .403(d)_

**PAY INCREASES**

The District shall not grant any extra compensation, fee, or allowance to a public officer, agent, servant, or contractor after service has been rendered or a contract entered into and performed in whole or in part. _Tex. Const. Art. III, Sec. 53_

**SALARY ADVANCES AND LOANS**

The District shall not lend its credit or gratuitously grant public money or things of value in aid of any individual, association, or corporation. _Tex. Const. Art. III, Sec. 52; Brazoria County v. Perry, 537 S.W.2d 89 (Tex. Civ. App.—Houston [1st Dist.] 1976, no writ)_

**DESIGNATION OF COMPENSATION FOR BENEFITS**

An employee who is covered by a cafeteria plan or who is eligible to pay health-care premiums through a premium conversion plan may elect to designate a portion of the employee’s compensation to be used as health-care supplementation. The amount designated may not exceed the amount permitted under federal law. _Education Code 22.103_

**USE**

An employee may use the compensation designated for health-care supplementation for any employee benefit, including depositing the designated amount into a cafeteria plan in which the employee is enrolled or using the designated amount for health-care premiums through a premium conversion plan. _Education Code 22.106_

**ANNUAL ELECTION**

Each school year, an active employee must elect in writing whether to designate a portion of the employee’s compensation to be used as health-care supplementation. The election must be made at the same time that the employee elects to participate in a cafeteria plan, if applicable. _Education Code 22.105_

**DEFINITION**

For purposes of the designation of compensation as health-care supplementation, “employee” means an active, contributing member of TRS who:

1. Is employed by the District;
2. Is not a retiree eligible for coverage under Insurance Code Chapter 1575 (retiree group health benefits);
3. Is not eligible for coverage by a group insurance plan under Insurance Code Chapter 1551 (state employee health insurance) or Chapter 1601 (state university employee health insurance); and
4. Is not an individual performing personal services for the District as an independent contractor.

_Education Code 22.101(2)_

**TRS CONTRIBUTIONS FOR NEW HIRES**

During each fiscal year, the District shall pay an amount equal to the state contribution rate, as established by the General Appropriations Act for the fiscal year, applied to the aggregate compensation of new members of the retirement system, during their first 90 days of employment.

“New member” means a person first employed on or after September 1, 2005, including a former member who withdrew retirement contributions under Government Code 822.003 and is reemployed on or after September 1, 2005.

On a monthly basis, the District shall:

1. Certify to TRS the total amount of salary paid during the first 90 days of employment of a new member and the total amount of employer payments under this section for the payroll periods; and

2. Retain information, as determined by TRS, sufficient to allow administration of this section, including information for each employee showing the applicable salary as well as aggregate compensation for the first 90 days of employment for new employees.

The District must remit the amount required under this section to TRS at the same time the District remits the member's contribution. In computing the amount required to be remitted, the District shall include compensation paid to an employee for the entire pay period that contains the 90th calendar day of new employment.

_Gov't Code 825.4041_

**TRS SURCHARGE FOR REHIRED RETIREES**

During each payroll period for which a retiree is reported, the District shall contribute to the retirement system for each retiree reported an amount based on the retiree’s salary equal to the sum of:

1. The current contribution amount that would be contributed by the retiree if the retiree were an active, contributing member; and

2. The current contribution amount authorized by the General Appropriations Act that the state would contribute for that retiree if the retiree were an active, contributing member.
HEALTH INSURANCE CONTRIBUTIONS

In addition, each payroll period and for each rehired retiree who is enrolled in TRS Care (retiree group health insurance), the District shall contribute to the TRS Care trust fund any difference between the amount the retiree is required to pay for the retiree and any enrolled dependents to participate in the group program and the full cost of the retiree’s and enrolled dependents’ participation in the group program, as determined by TRS. If more than one employer reports the retiree to TRS during a month, the amount of the required payment shall be prorated among employers.

EXCEPTION

The District is not required to contribute these amounts for a retiree who retired from the retirement system before September 1, 2005.

Gov’t Code 825.4092; Insurance Code 1575.204

NOTICE REGARDING EARNED INCOME TAX CREDIT

Not later than March 1 of each year, the District shall provide employees with information regarding general eligibility requirements for the federal earned income tax credit by one of the following means:

1. In person;
2. Electronically at the employee’s last known e-mail address;
3. Through a flyer included, in writing or electronically, as a payroll stuffer; or
4. By first class mail to the employee’s last known address.

The District may not satisfy this requirement solely by posting information in the workplace.

In addition, the District may provide employees with IRS publications and forms, or information prepared by the comptroller, relating to the earned income tax credit.

Labor Code 104.001-.003

DECREASING PAY

The Commissioner has held that a district may reduce educator compensation if it gives sufficient warning of a possible reduction in pay when educators can still unilaterally resign from their contracts. A sufficient warning must be both formal enough and specific enough to give educators a meaningful opportunity to decide whether to continue employment with the District. Brajenovich v. Alief Indep. Sch. Dist., Tex. Comm’r of Educ. Decision No. 021-R1O-1106 (2009)

WIDESPREAD SALARY REDUCTIONS

The following provisions apply only to a widespread reduction in the amount of annual salaries paid to classroom teachers in the District based primarily on District financial conditions rather than on teacher performance.
For any school year in which the District has reduced the amount of the annual salaries paid to classroom teachers from the amount paid for the preceding school year, the District shall reduce the amount of the annual salary paid to each District administrator or other professional employee by a percent or fraction of a percent that is equal to the average percent or fraction of a percent by which teacher salaries have been reduced.

*Education Code 21.4023*

The Board may not reduce salaries until the District has complied with the requirements at *Education Code 21.4022* [see SALARY REDUCTION/FURLOUGH PROCESS, below]. *Education Code 21.4022*

**FURLOUGH PROGRAM**

In accordance with District policy [see DFFA(LOCAL)], the Board may implement a furlough program and reduce the number of days of service otherwise required under *Education Code 21.401* [see DC] by not more than six days of service during a school year if the Commissioner certifies that the District will be provided with less state and local funding for that year than was provided to the District for the 2010–11 school year. *Education Code 21.4021(a)*

The Board may not implement a furlough program until the District has complied with the requirements at *Education Code 21.4022* [see SALARY REDUCTION/FURLOUGH PROCESS, below]. *Education Code 21.4022*

**FUNDING LEVELS**

Not later than July 1 of each year, the Commissioner shall determine whether the estimated amount of state and local funding per student in weighted average daily attendance to be provided to the District under the Foundation School Program for maintenance and operations for the following school year is less than the amount provided to the District for the 2010–11 school year. If the amount estimated to be provided is less, the Commissioner shall certify the percentage decrease in funding to be provided to the District. *Education Code 42.009*

**SALARIES**

Notwithstanding *Education Code 21.402* (minimum salary schedule), the Board may reduce the salary of an employee who is furloughed in proportion to the number of days by which service is reduced. Any reduction in the amount of the annual salary must be equally distributed over the course of the employee’s current contract with the District.

**FURLOUGH DAYS**

A furlough program must subject all contract personnel to the same number of furlough days. An educator may not be furloughed on a day that is included in the number of days of instruction required under *Education Code 25.081* [see EB]. Implementation of a fur-
lough program may not result in an increase in the number of required teacher workdays. An educator may not use personal, sick, or any other paid leave while the educator is on a furlough.

If the Board adopts a furlough program after the date by which a teacher must give notice of resignation from a probationary, term, or continuing contract [see DFE], an employee who subsequently resigns is not subject to sanctions imposed by SBEC.

A decision by the Board to implement a furlough program is final and may not be appealed and does not create a cause of action or require collective bargaining.

*Education Code 21.4021*

The Board may not implement a furlough program under Education Code 21.4021 or reduce salaries until the District has complied with the requirements below.

The District must use a process to develop a furlough program or other salary reduction proposal, as applicable, that:

1. Includes the involvement of the District’s professional staff; and

2. Provides District employees with the opportunity to express opinions regarding the furlough program or salary reduction proposal, as applicable, at the public meeting described below.

The Board must hold a public meeting at which the Board and District administration present:

1. Information regarding the options considered for managing the District’s available resources, including consideration of a tax rate increase and use of the District’s available fund balance;

2. An explanation of how the District intends, through implementation of a furlough program or salary reductions, as applicable, to limit the number of District employees who will be discharged or whose contracts will not be renewed. Any explanation of a furlough program must state the specific number of furlough days proposed to be required; and

3. Information regarding the local option residence homestead exemption.

The public and District employees must be provided with an opportunity to comment at the public meeting.

*Education Code 21.4022*
**Note:** This policy addresses leaves in general. For provisions regarding the Family and Medical Leave Act (FMLA), including FML for an employee seeking leave because of a relative's military service, see DECA. For provisions addressing leave for an employee's military service, see DECB.

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<tr>
<th>STATE LEAVE</th>
<th>STATE PERSONAL LEAVE</th>
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<tr>
<td>The District shall provide employees with five days per year of state personal leave, with no limit on accumulation and no restrictions on transfer among districts. The District may provide additional personal leave beyond this minimum.</td>
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<td>The Board may adopt a policy governing an employee's use of state personal leave, except that the policy may not restrict the purposes for which the leave may be used.</td>
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<td><strong>Education Code 22.003(a)</strong></td>
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<tr>
<th>STATE SICK LEAVE</th>
<th>(ACCUMULATED PRIOR TO 1995)</th>
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<tr>
<td>District employees retain any sick leave accumulated as state minimum sick leave under former Section 13.904(a) of the Education Code. Accumulated state sick leave shall be used only for the following:</td>
<td></td>
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<tr>
<td>1. Illness of the employee.</td>
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<td>2. Illness of a member of the employee's immediate family.</td>
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<td>3. Family emergency.</td>
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<td>4. Death in the employee's immediate family.</td>
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<td><strong>Acts of the 74th Legislative Session, Senate Bill 1, Sec. 66</strong></td>
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<th>FORMER EDUCATION SERVICE CENTER (ESC) EMPLOYEES</th>
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<td>The District shall accept the sick leave accrued by an employee who was formerly employed by a regional education service center (ESC), not to exceed five days per year for each year of employment. <strong>Education Code 8.007</strong></td>
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<tr>
<th>ORDER OF USE</th>
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<tr>
<td>The Board's policy governing an employee's use of state personal leave may not restrict the order in which an employee may use state personal leave and any additional personal leave provided by the District.</td>
</tr>
<tr>
<td>An employee who retains any state sick leave is entitled to use the state sick leave, state personal leave, or local personal leave in any order to the extent that the leave the employee uses is appropriate to the purpose of the leave.</td>
</tr>
<tr>
<td><strong>Education Code 22.003(a), (f)</strong></td>
</tr>
</tbody>
</table>
Each full-time educator shall be given a leave of absence for temporary disability at any time the educator's condition interferes with the performance of regular duties. The contract or employment of the educator may not be terminated while the educator is on a leave of absence for temporary disability. For purposes of temporary disability leave, pregnancy is considered a temporary disability.

A request for a leave of absence for temporary disability must be made to the Superintendent. The request must:

1. Be accompanied by a physician's statement confirming inability to work;
2. State the date requested by the educator for the leave to begin; and
3. State the probable date of return as certified by the physician.

The Board may adopt a policy providing for placing an educator on leave of absence for temporary disability if, in the Board's judgment in consultation with a physician who has performed a thorough medical examination of the educator, the educator's condition interferes with the performance of regular duties. The educator shall have the right to present to the Board testimony or other information relevant to the educator's fitness to continue in the performance of regular duties. [See DBB]

The educator shall notify the Superintendent of a desire to return to active duty no later than the 30th day before the expected date of return. The notice must be accompanied by a physician's statement indicating the educator's physical fitness for the resumption of regular duties.

An educator returning to active duty after a leave of absence for temporary disability is entitled to an assignment at the school where the educator formerly taught, subject to the availability of an appropriate teaching position. In any event, the educator shall be placed on active duty no later than the beginning of the next school year. A principal at another campus voluntarily may approve the appointment of an employee who wishes to return from leave of absence. However, if no other principal approves the assignment by the beginning of the next school year, the District must place the employee at the school at which the employee formerly taught or was assigned.

The Superintendent shall grant the length of leave of absence for temporary disability as required by the individual educator. The Board may establish a maximum length for a leave of absence for
temporary disability, but the maximum length may not be less than 180 calendar days.


**SICK LEAVE DIFFERENT FROM TEMPORARY DISABILITY LEAVE**

An employee’s entitlement to sick leave is unaffected by any concurrent eligibility for a leave of absence for temporary disability. The two types of leave are different, and each must be granted by its own terms. _Atty. Gen. Op. H-352_

**ASSAULT LEAVE**

In addition to all other days of leave, a District employee who is physically assaulted during the performance of regular duties is entitled to the number of days of leave necessary to recuperate from physical injuries sustained as a result of the assault. The leave shall be paid as set forth below at COORDINATION WITH WORKERS’ COMPENSATION BENEFITS.

A District employee is physically assaulted if the person engaging in the conduct causing injury to the employee:

1. Could be prosecuted for assault; or

2. Could not be prosecuted for assault only because the person’s age or mental capacity makes the person a nonresponsible person for purposes of criminal liability.

**NOTICE OF RIGHTS**

Any informational handbook the District provides to employees in an electronic or paper form or makes available by posting on the District’s Web site must include notification of an employee’s rights regarding assault leave, in the relevant section of the handbook. Any form used by the District through which an employee may request personal leave must include assault leave as an option.

**ASSIGNMENT TO ASSAULT LEAVE**

At the request of an employee, the District must immediately assign the employee to assault leave. Days of assault leave may not be deducted from accrued personal leave. Assault leave may not extend more than two years beyond the date of the assault. Following an investigation of the claim, the District may change the assault leave status and charge the leave against the employee’s accrued personal leave or against the employee’s pay if insufficient accrued personal leave is available.

**COORDINATION WITH WORKERS’ COMPENSATION BENEFITS**

Notwithstanding any other law, assault leave benefits due to an employee shall be coordinated with temporary income benefits due from workers’ compensation so the employee’s total compensation from temporary income benefits and assault leave benefits will equal 100 percent of the employee’s weekly rate of pay.

_Education Code 22.003(b)–(c-1)_,
The District shall reasonably accommodate an employee’s request to be absent from duty in order to participate in religious observances and practices, so long as it does not cause undue hardship on the conduct of District business. Such absence shall be without pay unless applicable paid local leave is available. 42 U.S.C. 2000e(j), 2000e-2(a); Ansonia Bd. of Educ. v. Philbrook, 479 U.S. 60, 107 S.Ct. 367 (1986); Pinsker v. Joint Dist. No. 28J of Adams and Arapahoe Counties, 735 F.2d 388 (10th Cir. 1984)

The District may not discharge, discipline, or penalize in any manner an employee because the employee complies with a valid subpoena to appear in a civil, criminal, legislative, or administrative proceeding. Labor Code 52.051(a)

The District may not discharge, discipline, reduce the salary of, or otherwise penalize or discriminate against an employee because of the employee’s compliance with a summons to appear as a juror. For each regularly scheduled workday on which a nonsalaried employee serves in any phase of jury service, the District shall pay the employee the employee’s normal daily compensation. An employee’s accumulated personal leave may not be reduced because of the employee’s service in compliance with a summons to appear as a juror. Education Code 22.006

The Board may grant a developmental leave of absence for study, research, travel, or other suitable purpose to an employee working in a position requiring a permanent teaching certificate who has served in the District at least five consecutive school years.

A developmental leave of absence may be granted for one school year at one-half regular salary or for one-half of a school year at full regular salary. Payment to the employee shall be made periodically by the District in the same manner, on the same schedule, and with the same deductions as if the employee were on full-time duty.

An employee on developmental leave shall continue to be a member of the Teacher Retirement System of Texas and shall be an employee of the District for purposes of participating in programs, holding memberships, and receiving benefits afforded by employment in the District.

Education Code 21.452

Uniform enforcement of a reasonable absence-control rule is not retaliatory discharge. For example, a district that terminates an employee for violating a reasonable absence-control provision cannot be liable for retaliatory discharge as long as the rule is uniformly enforced. Continental Coffee Products Co. v. Cazarez, 937

[Some employees may have protected status even after the expiration of all other leave. See CRE and DAA.]
The term “immediate family” shall include:

1. Spouse.
2. Son or daughter, including a biological, adopted, or foster child, a son- or daughter-in-law, a stepchild, a legal ward, or a child for whom the employee stands *in loco parentis*.
3. Parent, stepparent, parent-in-law, or other individual who stands *in loco parentis* to the employee.
5. Grandparent and grandchild.
6. Any person residing in the employee’s household at the time of illness or death.

For purposes of the Family and Medical Leave Act, the definition of “family” includes only spouse, parent, and child.

The term “family emergency” shall be limited to disasters and life-threatening situations involving the employee or a member of the employee’s immediate family.

A “workday” for purposes of accumulation, use, or recording shall mean the number of hours per day equivalent to the employee’s usual assignment, whether full-time or part-time.

Each employee shall earn state personal leave at the rate of one-half workday for each 18 workdays of employment, up to the statutory maximum of five workdays annually.

The Board requires employees to differentiate between uses of personal leave:

1. To be taken at the individual employee’s discretion, subject to limitations set out below.
2. To be used for the same reasons and in the same manner as state sick leave accumulated prior to May 30, 1995. [See DEC(LEGAL)]

A written request for use of discretionary personal leave shall be submitted to the immediate supervisor or designee in advance in accordance with administrative regulations. The reasons for which personal leave may be used shall not be limited by the District. In deciding to approve personal leave, however, the supervisor or designee shall consider the effect of the employee’s absence on the educational program, as well as the availability of substitutes. [See DEC(LOCAL)]
Discretionary personal leave may not be taken for more than three consecutive days.

Discretionary leave shall not be allowed on the day before a school holiday, the day after a school holiday, days scheduled for end-of-semester or end-of-year exams, days scheduled for state-mandated assessment tests, or professional or staff development days.

All employees shall earn five workdays of local sick leave per school year, concurrently with state personal leave. The five workdays shall accumulate to a maximum of 20 workdays and shall be taken with no loss of pay.

Local leave shall be used under the terms and conditions applicable to state sick leave accumulated prior to the 1995–96 school year. [See DEC(LEGAL)]

An employee’s balance of local sick leave or of local personal leave shall be reduced to zero upon termination or at the end of the contract period in the year termination occurs, whichever comes first.

After all state leave and local sick leave have been exhausted in the course of a prolonged personal illness or disability, including pregnancy-related disability, a professional employee shall be granted up to 20 consecutive workdays of extended sick leave; and auxiliary employees shall be granted up to five consecutive workdays of extended sick leave with one-half the daily rate of pay deducted for each day used. Extended sick leave may be used only once in a 12-month period. For purposes of entitlement to extended sick leave, the 12-month period shall be measured forward from the day an individual’s first extended leave begins.

To qualify for extended sick leave, an employee shall meet and comply with the following:

1. The employee shall have worked for the District for the 12 consecutive months immediately preceding the need for leave.

2. The employee shall be required to submit a written request for leave on the medical certification form provided by the District.

3. In cases of maternity leave, the mother shall be required to return no later than six calendar weeks from the date of a normal delivery. In cases of caesarean delivery, eight calendar weeks shall be allowed from the date of delivery. If the mother qualifies under family and medical leave, any addi-
tional time beyond the amounts established in this policy shall be excluded from local extended sick leave benefits.

**LEAVE FOR ADOPTIVE PARENTS**

The District shall permit up to 20 consecutive workdays of leave to be used by parents of newly adopted children with prior approval of the immediate supervisor. An employee may use up to 20 workdays of any paid leave available for this purpose (state sick leave cannot be used as adoptive leave) without a reduction in pay. State personal leave may be used for this purpose.

If the employee does not have 20 accumulated workdays of available leave, the daily rate for a substitute shall be deducted from the employee’s salary for the difference between the number of workdays available and 20.

**LEAVE OF ABSENCE**

An educator (a person required to hold a certificate issued under TEC Chapter 21, Subchapter B) may be granted up to one year’s leave without pay for the purpose of additional schooling, certification, or to participate in an exchange program. Upon return, the educator may be considered for placement if a suitable assignment exists. Placement shall be contingent on the approval of the immediate supervisor.

**SICK LEAVE POOL**

In accordance with District guidelines, the District shall permit sick leave pools to be established for employees.

**USE AND RECORDING**

Available leave shall be used in the following order, as applicable:

1. Compensatory leave.
2. State sick leave accumulated prior to the 1995–96 school year.
4. Local sick leave.
5. Extended sick leave.

Leave used shall be recorded in increments of whole and half workdays. Employees shall be charged leave as used even if a substitute is not employed.

Any leave taken for which leave balances are insufficient shall result in a deduction from the employee’s paycheck commensurate with the amount of leave taken.

**AVAILABILITY**

For professional and paraprofessional employees, paid leave for the current year shall be available for use at the beginning of the
school year. However, the employee must have worked at least one week of a new school year to qualify for advance of leave.

For auxiliary or classified employees, paid state and local leave shall become available as it is earned.

Paid leave shall not be approved for more workdays than have been accumulated in prior years plus those to be earned during the current year.

When an employee who has used more leave than he or she has accumulated ceases to be employed by the District, the cost of the unearned leave days shall be deducted from the employee’s final paycheck.

**MEDICAL CERTIFICATION**

An employee absent more than five consecutive workdays because of personal illness shall submit medical certification of the illness and fitness to return to work. An employee absent more than five consecutive workdays for illness of an immediate family member shall present medical certification of the family member’s absence.

Medical certification shall be made by a health care provider as defined by the Family and Medical Leave Act. [See DEC(LEGAL)]

**TEMPORARY DISABILITY**

Any full-time employee whose position requires educator certification by the State Board for Educator Certification or by the District shall be eligible for temporary disability leave. The maximum length of temporary disability leave shall be 180 calendar days.

**COURT APPEARANCES**

Absences for court appearances related to an employee’s personal business shall be deducted from the employee’s leave or, at the option of the employee, shall be taken as leave without pay.

**FAMILY AND MEDICAL LEAVE**

For purposes of an employee’s entitlement to family and medical leave, the 12-month period shall be defined as the 12-month period measured forward from the date an employee’s family and medical leave begins.

**CONCURRENT USE OF LEAVE**

The District shall require employees to use family and medical leave concurrently with paid leave and with temporary disability leave if applicable.

**COMBINED LEAVE FOR SPOUSES**

If both spouses are employed by the District, family and medical leave for the birth, adoption, or placement of a child, or to care for a parent with a serious health condition may be limited to a combined total of 12 weeks as determined by the needs of the District.

**INTERMITTENT LEAVE FOR CHILD CARE**

Use of intermittent family and medical leave shall not be permitted for the care of a newborn child or upon the adoption or placement of a child with the employee.
CERTIFICATION OF ILLNESS 

Upon request for family and medical leave for the employee’s serious health condition or that of a spouse, parent, or child, the employee shall provide medical certification of the illness or disability.

MEDICAL RELEASE 

The employee’s request for reinstatement shall be accompanied by medical certification of the employee’s ability to perform essential job functions.

TEACHER REINSTATEMENT 

A teacher desiring to return to work at or near the conclusion of a semester shall be reinstated in accordance with the END-OF-TERM LEAVE section in DEC(LEGAL).

FAILURE TO RETURN 

If, at the expiration of the family and medical leave, the employee is able to return to work but chooses not to do so, the District shall require reimbursement of the employee benefits contribution made by the District during the period in which such leave was taken as unpaid leave.

WORKERS’ COMPENSATION 

An employee receiving workers’ compensation wage benefits shall be assigned to family and medical leave, if applicable.

PAID LEAVE OFFSET 

The employee shall inform the appropriate administrator whether he or she chooses to use available paid leave. Any paid leave used shall be offset against workers’ compensation wage benefits. [See CRE(LEGAL)]

ANNUAL ATTENDANCE INCENTIVE 

A professional employee whose assignment would require a substitute and who does not use the five state workdays of earned leave during the school year shall receive incentive pay for the unused workdays at the substitute’s daily rate of pay. No more than five workdays annually shall be included under this plan.

Absences that qualify under family and medical leave and absences for bona fide religious holy days shall not count against the employee’s eligibility for the incentive. [See DEC(LEGAL)]
Note: This policy summarizes the Family and Medical Leave Act (FMLA) and implementing regulations, including FML for an employee seeking leave because of a relative’s military service. For provisions on leaves in general, see DEC. For provisions addressing leave for an employee’s military service, see DECB.

This introductory page outlines the contents of this policy on the Family and Medical Leave Act. See the following sections for statutory provisions on:

SECTION I General Provisions pages 2–5
1. Applicability to districts
2. Employee eligibility
3. Qualifying reasons for leave
4. Definitions

SECTION II Leave Entitlement and Use pages 5–12
1. Amount of leave
2. Intermittent use of leave
3. Special rules for instructional employees
4. Use of paid leave
5. Continuation of health insurance
6. Reinstatement of employee

SECTION III Notices and Medical Certification pages 12–18
1. Notices to employee
2. Notice to employer regarding use of FML
3. Certification of leave

SECTION IV Miscellaneous Provisions page 18–19
1. Preservation of records
2. Prohibition against discrimination
SECTION I: GENERAL PROVISIONS

COVERED EMPLOYER

All public elementary and secondary schools are "covered employers" under the FMLA, without regard to the number of employees employed. The term "employer" includes any person who acts directly or indirectly in the interest of the District to any of the District's employees. 29 U.S.C. 2611(4), 2618(a); 29 CFR 825.104(a).

ELIGIBLE EMPLOYEE

“Eligible employee” means an employee who:

1. Has been employed by the District for at least 12 months. The 12 months need not be consecutive;

2. Has been employed by the District for at least 1,250 hours of service during the 12-months immediately preceding the commencement of leave; and

3. Is employed at a worksite where 50 or more employees are employed by the District within 75 miles of that worksite.

29 U.S.C. 2611(2); 29 CFR 825.110

[A district that has no eligible employees must comply with the requirements at GENERAL NOTICE, below.]

QUALIFYING REasons FOR LEAVE

The District shall grant leave to eligible employees:

1. For the birth of a son or daughter, and to care for the newborn child;

2. For placement with the employee of a son or daughter for adoption or foster care [For the definitions of “adoption” and “foster care,” see 29 CFR 825.122];

3. To care for the employee’s spouse, son or daughter, or parent with a serious health condition;

4. Because of a serious health condition that makes the employee unable to perform the functions of the employee’s job [For the definition of “serious health condition,” see 29 CFR 825.113];

5. Because of any qualifying exigency arising out of the fact that the employee’s spouse, son, daughter, or parent is a covered military member on covered active duty (or has been notified of an impending call or order to active duty) [For the definition of "covered military member," see 29 CFR 825.126(b). For the definition of “covered active duty,” see 29 U.S.C. 2611(14)]; and

6. To care for a covered servicemember with a serious injury or illness incurred in the line of duty if the employee is the
spouse, son, daughter, parent, or next of kin of the service-member. [For the definitions of “covered servicemember” and “serious injury or illness,” see 29 U.S.C. 2611(15), (18)]

29 U.S.C. 2612(a); 29 CFR 825.112

For provisions regarding treatment for substance abuse, see 29 CFR 825.119.

**QUALIFYING EXIGENCY**

An eligible employee may take FMLA leave for one or more of the following qualifying exigencies:

1. Short-notice deployment.
2. Military events and related activities.
3. Childcare and school activities.
5. Counseling.
6. Rest and recuperation.
7. Post-deployment activities.
8. Additional activities provided that the District and employee agree that the leave shall qualify as an exigency and agree to both the timing and duration.

29 CFR 826.126

Both the mother and father are entitled to FMLA leave to be with a healthy newborn child (i.e., bonding time) during the 12-month period beginning on the date of birth. In addition, the mother is entitled to FMLA leave for incapacity due to pregnancy, for prenatal care, or for her own serious health condition following the birth of the child. The mother is entitled to leave for incapacity due to pregnancy even though she does not receive treatment from a health-care provider during the absence and even if the absence does not last for more than three consecutive calendar days. The husband is entitled to FMLA leave if needed to care for his pregnant spouse who is incapacitated, during her prenatal care, or following the birth of a child if the spouse has a serious health condition. [For the definition of “needed to care for,” see 29 CFR 825.124] 29 CFR 825.120

**DEFINITIONS**

“Next of kin of a covered servicemember” (for purposes of military caregiver leave) means:

**NEXT OF KIN**

1. The blood relative specifically designated in writing by the covered servicemember as his or her nearest blood relative
for purposes of military caregiver leave under the FMLA. The designated individual shall be deemed to be the covered servicemember’s only next of kin; or

2. When no such designation has been made, the nearest blood relative other than the covered servicemember’s spouse, parent, son, or daughter, in the following order of priority:

   a. Blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions,

   b. Brothers and sisters,

   c. Grandparents,

   d. Aunts and uncles, and

   e. First cousins.

If there are multiple family members with the same level of relationship to the covered servicemember, all such family members shall be considered the covered servicemember’s next of kin and may take FMLA leave to provide care to the covered servicemember, either consecutively or simultaneously.

29 CFR 825.127(b)(3)

PARENT

“Parent” (for purposes of family, medical, and qualifying exigency leave) means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a son or daughter. This term does not include parents “in law.” 29 CFR 825.122(b)

For the definition of “parent of a covered servicemember” for purposes of military caregiver leave, see 29 CFR 825.127(b)(2).

SON OR DAUGHTER

“Son or daughter” (for purposes of family and medical leave) means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and “incapable of self-care because of a mental or physical disability” at the time that FMLA leave is to commence. 29 CFR 825.122(c)

For the definition of “son or daughter on active duty or call to active duty status” for purposes of qualifying exigency leave, see 29 CFR 825.126(b)(1).

For the definition of “son or daughter of a covered servicemember” for purposes of military caregiver leave, see 29 CFR 825.127(b)(1).
“Spouse” means a husband or wife as defined or recognized under state law for purposes of marriage in the state where the employee resides, including common law marriage in states where it is recognized. 29 CFR 825.122(a)

SECTION II: LEAVE ENTITLEMENT AND USE

AMOUNT OF LEAVE

Except in the case of military caregiver leave, an eligible employee's FMLA leave entitlement is limited to a total of 12 workweeks of leave during a 12-month period for any one or more of the qualifying reasons.

A husband and wife who are employed by the same district may be limited to a combined total of 12 weeks of FMLA leave during any 12-month period if leave is taken for the birth of a son or daughter, the placement of a child for adoption or foster care, or to care for a parent with a serious health condition.

29 U.S.C. 2612(a), (f); 29 CFR 825.120(a)(3), .200, .201

DETERMINING THE 12-MONTH PERIOD

Except with respect to military caregiver leave, the District may choose any one of the following methods for determining the “12-month period” in which the 12 weeks of leave entitlement occurs:

1. The calendar year;
2. Any fixed 12-month “leave year,” such as a fiscal year or a year starting on an employee’s “anniversary” date;
3. The 12-month period measured forward from the date any employee's first FMLA leave begins; or
4. A “rolling” 12-month period measured backward from the date an employee uses any FMLA leave.

29 CFR 825.200(b)

MILITARY CAREGIVER LEAVE

In the case of military caregiver leave, an eligible employee’s FMLA leave entitlement is limited to a total of 26 workweeks of leave during a “single 12-month period.” The “single 12-month period” is measured forward from the date an employee’s first FMLA leave to care for the covered servicemember begins, regardless of the method used by the District to determine the 12-month period for other FMLA leaves. During the “single 12-month period,” an eligible employee’s FMLA leave entitlement is limited to a combined total of 26 workweeks of FMLA leave for any qualifying reason. 29 CFR 825.200(f), (g)

A husband and wife who are employed by the same district may be limited to a combined total of 26 weeks of FMLA leave during the “single 12-month period” if leave is taken as military caregiver.
leave, for the birth of a son or daughter, for the placement of a child for adoption or foster care, or to care for a parent with a serious health condition. 29 CFR 825.127(d)

If the District’s activity temporarily ceases and employees generally are not expected to report for work for one or more weeks (e.g., a school closing for two weeks for the Christmas/New Year holiday), those days do not count against the employee’s FMLA leave entitlement. Similarly, the period during the summer vacation when the employee would not have been required to report for duty is not counted against the employee’s FMLA leave entitlement. 29 CFR 825.200(h), .601(a)

FMLA leave may be taken intermittently or on a reduced leave schedule under certain circumstances. “Intermittent leave” is FMLA leave taken in separate blocks of time due to a single qualifying reason. A “reduced leave schedule” is a leave schedule that reduces an employee’s usual number of working hours per workweek, or hours per workday.

For leave taken because of the employee’s own serious health condition, to care for a parent, son, or daughter with a serious health condition, or military caregiver leave, there must be a medical need for leave and it must be that such medical need can be best accommodated through an intermittent or reduced leave schedule. Leave due to a qualifying exigency may also be taken on an intermittent or reduced schedule basis.

When leave is taken after the birth of a healthy child or placement of a healthy child for adoption or foster care, an employee may take leave intermittently or on a reduced leave schedule only if the District agrees.

29 U.S.C. 2612(b); 29 CFR 825.202

If an employee requests intermittent or reduced schedule leave that is foreseeable based on planned medical treatment, the District may require the employee to transfer temporarily to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee’s regular position. 29 U.S.C. 2612(b)(2); 29 CFR 825.204

When an employee takes leave on an intermittent or reduced schedule, only the amount of leave actually taken may be counted toward the employee’s leave entitlement. The District must account for intermittent or reduced schedule leave using an increment no greater than the shortest period of time that the District
uses to account for use of other forms of leave, provided the increment is not greater than one hour. 29 CFR 825.205

SPECIAL RULES FOR INSTRUCTIONAL EMPLOYEES

Special rules apply to certain employees of the District. These special rules affect leave taken intermittently or on a reduced schedule, or taken near the end of an academic term (semester) by instructional employees.

“Instructional employees” are those whose principal function is to teach and instruct students in a class, a small group, or an individual setting. This term includes not only teachers, but also athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. It does not include teacher assistants or aides who do not have as their principal job actual teaching or instructing, nor does it include auxiliary personnel such as counselors, psychologists, or curriculum specialists. It also does not include cafeteria workers, maintenance workers, or bus drivers.

29 CFR 825.600

If an instructional employee does not give required notice of foreseeable leave to be taken intermittently or on a reduced schedule, the District may require the employee to take leave of a particular duration or to transfer temporarily to an alternative position. Alternatively, the District may require the employee to delay the taking of leave until the notice provision is met. 29 CFR 601(b)

20 PERCENT RULE

If an eligible instructional employee needs intermittent leave or leave on a reduced leave schedule to care for a family member with a serious health condition, to care for a covered service-member, or for the employee's own serious health condition; the leave is foreseeable based on planned medical treatment; and the employee would be on leave for more than 20 percent of the total number of working days over the period the leave would extend, the District may require the employee to choose:

1. To take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or

2. To transfer temporarily to an available alternative position for which the employee is qualified, which has equivalent pay and benefits and which better accommodates recurring periods of leave than does the employee's regular position.

“Periods of a particular duration” means a block or blocks of time beginning no earlier than the first day for which leave is needed and ending no later than the last day on which leave is needed, and may include one uninterrupted period of leave. If an employee chooses to take leave for “periods of a particular duration” in the
case of intermittent or reduced schedule leave, the entire period of leave taken will count as FMLA leave.

29 U.S.C. 2618(c); 29 CFR 825.601, .603

As a rule, the District may not require an employee to take more FMLA leave than the employee needs. The FMLA recognizes exceptions where instructional employees begin leave near the end of a semester. As set forth below, the District may in certain cases require the employee to take leave until the end of the semester.

The school semester, or “academic term,” typically ends near the end of the calendar year and the end of spring each school year. In no case may a school have more than two academic terms or semesters each year for purposes of the FMLA.

If the District requires the employee to take leave until the end of the semester, only the period of leave until the employee is ready and able to return to work shall be charged against the employee’s FMLA leave entitlement. Any additional leave required by the District to the end of the semester is not counted as FMLA leave; however, the District shall maintain the employee’s group health insurance and restore the employee to the same or equivalent job, including other benefits, at the end of the leave.

29 U.S.C. 2618(d); 29 CFR 825.603

The District may require an instructional employee to continue taking leave until the end of the semester if:

1. The employee begins leave more than five weeks before the end of the semester;
2. The leave will last at least three weeks; and
3. The employee would return to work during the three-week period before the end of the semester.

The District may require an instructional employee to continue taking leave until the end of the semester if:

1. The employee begins leave during the last five weeks of the semester for any reason other than the employee’s own serious health condition or a qualifying exigency;
2. The leave will last more than two weeks; and
3. The employee would return to work during the two-week period before the end of the semester.
The District may require an instructional employee to continue taking leave until the end of the semester if the employee begins leave during the three-week period before the end of the semester for any reason other than the employee's own serious health condition or a qualifying exigency.

29 CFR 825.602

Generally, FMLA leave is unpaid leave. However, an employee may choose to substitute accrued paid leave for unpaid FMLA leave. If an employee does not choose to substitute accrued paid leave, the District may require the employee to do so. The term "substitute" means that the paid leave provided by the District, and accrued pursuant to established policies of the District, will run concurrently with the unpaid FMLA leave. An employee's ability to substitute accrued paid leave is determined by the terms and conditions of the District's normal leave policy. 29 U.S.C. 2612(d); 29 CFR 825.207(a)

If an employee requests and is permitted to use accrued compensatory time to receive pay during FMLA leave, or if the District requires such use, the compensatory time taken may be counted against the employee's FMLA leave entitlement. 29 CFR 825.207(f)

A serious health condition may result from injury to the employee "on or off" the job. If the District designates the leave as FMLA leave, the leave counts against the employee's FMLA leave entitlement. Because the workers' compensation absence is not unpaid, neither the employee nor the District may require the substitution of paid leave. However, the District and an employee may agree, where state law permits, to have paid leave supplement workers' compensation benefits.

If the health-care provider treating the employee for the workers' compensation injury certifies that the employee is able to return to a "light duty job" but is unable to return to the same or equivalent job, the employee may decline the District's offer of a "light duty job." As a result, the employee may lose workers' compensation payments, but is entitled to remain on unpaid FMLA leave until the employee's FMLA leave entitlement is exhausted. As of the date workers' compensation benefits cease, the substitution provision becomes applicable and either the employee may elect or the District may require the use of accrued paid leave.

29 CFR 825.207(d)

During any FMLA leave, the District must maintain the employee's coverage under any group health plan on the same conditions as
coverage would have been provided if the employee had been continuously employed during the entire leave period.

An employee may choose not to retain group health plan coverage during FMLA leave. However, when the employee returns from leave, the employee is entitled to be reinstated on the same terms as before taking leave without any qualifying period, physical examination, exclusion of pre-existing conditions, and the like.

29 U.S.C. 2614(c); 29 CFR 825.209

**PAYMENT OF PREMIUMS**

During FMLA leave, the employee must continue to pay the employee's share of group health plan premiums. If premiums are raised or lowered, the employee would be required to pay the new premium rates. 29 CFR 825.210

**FAILURE TO PAY PREMIUMS**

Unless the District has an established policy providing a longer grace period, the District's obligations to maintain health insurance coverage cease if an employee's premium payment is more than 30 days late. In order to terminate the employee’s coverage, the District must provide written notice to the employee that the payment has not been received. Such notice must be mailed to the employee at least 15 days before coverage is to cease, advising that coverage will be dropped on a specified date at least 15 days after the date of the letter unless the payment has been received by that date. Coverage for the employee may be terminated at the end of the 30-day grace period, if the required 15-day notice has been provided.

Upon the employee's return from FMLA leave, the District must still restore the employee to coverage/benefits equivalent to those the employee would have had if leave had not been taken and the premium payment(s) had not been missed. The employee may not be required to meet any qualification requirements imposed by the plan, including any new preexisting condition waiting period, to wait for an open season, or to pass a medical examination to obtain reinstatement of coverage.

29 CFR 825.212

**RECOVERY OF BENEFIT COST**

If an employee fails to return to work after FMLA leave has been exhausted or expires, a District may recover from the employee its share of health plan premiums during the employee’s unpaid FMLA leave, unless the employee’s failure to return is due to one of the reasons set forth in the regulations. The District may not recover its share of health insurance premiums for any period of FMLA leave covered by paid leave. 29 CFR 825.213
On return from FMLA leave, an employee is entitled to be returned to the same position the employee held when leave began, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. An employee is entitled to reinstatement even if the employee has been replaced or his or her position has been restructured to accommodate the employee's absence. However, an employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period. 29 CFR 825.214(a), .216(a)

If the District has a uniformly applied policy governing outside or supplemental employment, the policy may continue to apply to an employee while on FMLA leave. A district that does not have such a policy may not deny FMLA benefits on the basis of outside or supplemental employment unless the FMLA leave was fraudulently obtained. 29 U.S.C. 2618(e); 29 CFR 825.216(e)

The District shall make the determination of how an employee is to be restored to “an equivalent position” upon return from FMLA leave on the basis of established Board policies and practices. The “established policies” must be in writing, must be made known to the employee before the taking of FMLA leave, and must clearly explain the employee’s restoration rights upon return from leave. Any established policy which is used as the basis for restoration of an employee to “an equivalent position” must provide substantially the same protections as provided in the FMLA. For example, an employee may not be restored to a position requiring additional licensure or certification. 29 CFR 825.604

An employee is entitled to any unconditional pay increases that may have occurred during the FMLA leave period, such as cost of living increases. Pay increases conditioned upon seniority, length of service, or work performed must be granted in accordance with the District’s policy or practice with respect to other employees on an equivalent leave status for a reason that does not qualify as FMLA leave.

Equivalent pay includes any bonus or payment, whether it is discretionary or non-discretionary. However, if a bonus or other payment is based on the achievement of a specified goal such as hours worked, products sold, or perfect attendance, and the employee has not met the goal due to FMLA leave, then the payment may be denied, unless otherwise paid to employees on an equivalent leave status for a reason that does not qualify as FMLA leave. For example, if an employee who used paid vacation leave for a non-FMLA purpose would receive the payment, then an employee
who used paid vacation leave for an FMLA-protected purpose also must receive the payment.

29 CFR 825.215(c)

KEY EMPLOYEES
The District may deny job restoration to a key employee if such denial is necessary to prevent substantial and grievous economic injury to the operations of the District. 29 U.S.C. 2614(b); 29 CFR 825.217–219

SECTION III: NOTICES AND MEDICAL CERTIFICATION

Every covered employer must post on its premises a notice explaining the FMLA's provisions and providing information concerning the procedures for filing complaints with the Department of Labor's Wage and Hour Division. The notice must be posted prominently where it can be readily seen by employees and applicants for employment. Covered employers must post this general notice even if no employees are eligible for FMLA leave.

If the District has any eligible employees, it shall also:

1. Include the notice in employee handbooks or other written guidance to employees concerning employee benefits or leave rights, if such written materials exist; or

2. Distribute a copy of the general notice to each new employee upon hiring.

Electronic posting is sufficient if it meets the other requirements of this section.

If the District's workforce is comprised of a significant portion of workers who are not literate in English, the District shall provide the general notice in a language in which the employees are literate.

The District may use Department of Labor (DOL) form WHD 1420 or may use another format so long as the information provided includes, at a minimum, all of the information contained in that notice.

29 CFR 825.300(a)

ELIGIBILITY NOTICE
When an employee requests FMLA leave, or when the District acquires knowledge that an employee's leave may be for an FMLA-qualifying reason, the District must notify the employee of the employee's eligibility to take FMLA leave. If the employee is not eligible for FMLA leave, the notice must state at least one reason why the employee is not eligible.

The District must provide the eligibility notice within five business days, absent extenuating circumstances. Notification of eligibility
may be oral or in writing. The District may use DOL form WH-381
to provide such notification to employees. The District shall trans-
late the notice in any situation in which it is required to translate the
general notice.

29 CFR 825.300(b)

Each time the District provides an eligibility notice to an employee,
the District shall also provide a written rights and responsibilities
notice. The rights and responsibilities notice must include the in-
formation required by the FMLA regulations at 29 CFR
825.300(c)(1).

The District may use DOL form WH-381 to provide such notification
to employees. The District may adapt the prototype notice as ap-
propriate to meet these notice requirements. The notice may be
distributed electronically if it meets the other requirements of this
section. The District shall translate the notice in any situation in
which it is required to translate the general notice.

29 CFR 825.300(c)

When the District has enough information to determine whether
leave is being taken for an FMLA-qualifying reason, the District
must notify the employee whether the leave will be designated as
FMLA leave. If the District determines that the leave will not be
designated as FMLA-qualifying, the District must notify the em-
ployee of that determination. Absent extenuating circumstances,
the District must provide the designation notice within five business
days.

The District may use DOL form WH-382 to provide such notification
to employees. If the leave is not designated as FMLA leave be-
cause it does not meet the requirements of the Act, the notice to
the employee that the leave is not designated as FMLA leave may
be in the form of a simple written statement.

The designation notice must include the information required by
the FMLA regulations at 29 CFR 825.300(d)(1) (substitution of paid
leave), (d)(3) (fitness for duty certification), and (d)(6) (amount of
leave charged against FMLA entitlement). For further provisions
on designation of leave, see 29 CFR 825.301.

29 CFR 825.300(d)

The District may retroactively designate leave as FMLA leave, with
appropriate notice to the employee, if the District’s failure to timely
designate leave does not cause harm or injury to the employee. In
addition, the District and an employee may agree that leave will be
retroactively designated as FMLA leave. 29 CFR 825.301(d)
An employee giving notice of the need for FMLA leave must state a qualifying reason for the leave and otherwise satisfy the requirements for notice of foreseeable and unforeseeable leave, below. The employee does not need to expressly assert rights under the Act or even mention the FMLA. 29 CFR 825.301

An employee must provide at least 30 days’ advance notice before FMLA leave is to begin if the need for leave is foreseeable based upon an expected birth, placement for adoption or foster care, or planned medical treatment of the employee, a family member, or a covered servicemember. If 30 days’ notice is not practicable, the employee must give notice as soon as practicable. For leave due to a qualifying exigency, the employee must provide notice as soon as practicable regardless of how far in advance the leave is foreseeable.

When planning medical treatment, the employee must consult with the District and make a reasonable effort to schedule the treatment so as not to disrupt unduly the District’s operations, subject to the approval of the health-care provider. 29 CFR 825.302

When the approximate timing of leave is not foreseeable, an employee must provide notice to the District as soon as practicable under the facts and circumstances of the particular case. It generally should be practicable for the employee to provide notice of leave that is unforeseeable within the time prescribed by the District’s usual and customary notice requirements applicable to such leave. 29 CFR 825.303

The District may require an employee to comply with its usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances. If an employee does not comply with usual notice and procedural requirements, and no unusual circumstances justify the failure to comply, FMLA leave may be delayed or denied. 29 CFR 825.302(d)–.303(c)

The District may require that an employee’s FMLA leave be supported by certification, as described below. The District must give notice of a requirement for certification each time certification is required. At the time the District requests certification, the District must advise the employee of the consequences of failure to provide adequate certification. 29 CFR 825.305(a)

In most cases, the District should request certification at the time the employee gives notice of the need for leave or within five business days thereafter or, in the case of unforeseen leave, within five business days after the leave commences. The District may re-
### INCOMPLETE OR INSUFFICIENT CERTIFICATION

The District shall advise an employee if it finds a certification incomplete or insufficient and shall state in writing what additional information is necessary to make the certification complete and sufficient. The District must provide the employee with seven calendar days (unless not practicable under the particular circumstances despite the employee's diligent, good faith efforts) to cure any such deficiency.

A certification is "incomplete" if one or more of the applicable entries have not been completed. A certification is "insufficient" if it is complete, but the information provided is vague, ambiguous, or non-responsive. A certification that is not returned to the District is not considered incomplete or insufficient, but constitutes a failure to provide certification.

### MEDICAL CERTIFICATION OF SERIOUS HEALTH CONDITION

When leave is taken because of an employee's own serious health condition, or the serious health condition of a family member, the District may require the employee to obtain medical certification from a health-care provider. The District may use DOL optional form WH-380-E when the employee needs leave due to the employee's own serious health condition and optional form WH-380-F when the employee needs leave to care for a family member with a serious health condition. The District may not require information beyond that specified in the FMLA regulations.

An employee may choose to comply with the certification requirement by providing the District with an authorization, release, or waiver allowing the District to communicate directly with the health-care provider.

For the definition of "health-care provider," see 29 CFR 825.125.

### AUTHENTICATION AND CLARIFICATION

If an employee submits a complete and sufficient certification signed by the health-care provider, the District may not request additional information from the health-care provider. However, the District may contact the health-care provider for purposes of clarification and authentication of the certification after the District has given the employee an opportunity to cure any deficiencies, as set forth above. To make such contact, the District must use a health-
care provider, a human resources professional, a leave administrator, or a management official. Under no circumstances may the employee’s direct supervisor contact the employee’s health-care provider.

“Authentication” means providing the health-care provider with a copy of the certification and requesting verification that the information on the form was completed and/or authorized by the health-care provider who signed the document; no additional medical information may be requested.

“Clarification” means contacting the health-care provider to understand the handwriting on the certification or to understand the meaning of a response. The District may not ask the health-care provider for additional information beyond that required by the certification form. The requirements of the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule must be satisfied when individually identifiable health information of an employee is shared with the District by a HIPAA-covered health-care provider.

29 CFR 825.307(a)

SECOND AND THIRD OPINIONS

If the District has reason to doubt the validity of a medical certification, the District may require the employee to obtain a second opinion at the District’s expense. If the opinions of the employee’s and the District’s designated health-care providers differ, the District may require the employee to obtain certification from a third health-care provider, again at the District’s expense. 29 CFR 825.307(b), (c)

FOREIGN MEDICAL CERTIFICATION

If the employee or a family member is visiting another country, or a family member resides in another country, and a serious health condition develops, the District shall accept medical certification as well as second and third opinions from a health-care provider who practices in that country. If the certification is in a language other than English, the employee must provide the District with a written translation of the certification upon request. 29 CFR 825.307(f)

RECERTIFICATION

The District may request recertification no more often than every 30 days and only in connection with an absence by the employee, except as set forth in the FMLA regulations. The District must allow at least 15 calendar days for the employee to provide recertification.

As part of the recertification for leave taken because of a serious health condition, the District may provide the health-care provider with a record of the employee’s absence pattern and ask the health-care provider if the serious health condition and need for leave is consistent with such a pattern.

29 CFR 308
The first time an employee requests leave because of a qualifying exigency, the District may require the employee to provide a copy of the covered military member's active duty orders or other documentation issued by the military which indicates that the covered military member is on active duty or call to active duty status in support of a contingency operation, and the dates of the covered military member's active duty service.

The District may also require that the leave be supported by a certification that addresses the information at 29 CFR 825.309(b). The District may use DOL optional form WH-384, or another form containing the same basic information, for this certification. The District may not require information beyond that specified in the regulations.

29 CFR 825.309

When an employee takes military caregiver leave, the District may require the employee to obtain a certification completed by an authorized health-care provider of the covered servicemember. In addition, the District may request that the employee and/or covered servicemember address in the certification the information at 29 CFR 825.310(c). The District may also require the employee to provide confirmation of a covered family relationship to the seriously injured or ill servicemember.

The District may use DOL optional form WH-385, or another form containing the same basic information, for this certification. The District may not require information beyond that specified in the regulations. The District must accept as sufficient certification “invitational travel orders” ("ITOs") or “invitational travel authorizations” ("ITAs") issued to any family member to join an injured or ill servicemember at his or her bedside.

The District may seek authentication and/or clarification of the certification under the procedures described above. Second and third opinions, and recertifications, are not permitted for leave to care for a covered servicemember.

29 CFR 825.310

The District may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work. The District’s policy regarding such reports may not be discriminatory and must take into account all of the relevant facts and circumstances related to the individual employee’s leave situation.

29 CFR 825.311

As a condition of restoring an employee who took FMLA leave due to the employee’s own serious health condition, the District may
have a uniformly applied policy or practice that requires all similarly situated employees (i.e., same occupation, same serious health condition) who take leave for such conditions to obtain and present certification from the employee’s health-care provider that the employee is able to resume work. The District may require that the certification specifically address the employee’s ability to perform the essential functions of the employee’s job. 29 CFR 825.312

If the employee fails to provide the District with a complete and sufficient certification, despite the opportunity to cure, or fails to provide any certification, the District may deny the taking of FMLA leave. This provision applies in any case where the District requests a certification, including any clarifications necessary to determine if certifications are authentic and sufficient. 29 CFR 825.305

For failure to provide timely certification of foreseeable leave, see 29 CFR 825.313(a). For failure to provide timely certification of unforeseeable leave, see 29 CFR 825.313(b). For failure to provide timely recertification, see 29 CFR 825.313(c). For failure to provide timely fitness-for-duty certification, see 29 CFR 825.313(d).

SECTION IV: MISCELLANEOUS PROVISIONS

The District shall make, keep, and preserve records pertaining to its obligations under the FMLA in accordance with the recordkeeping requirements of the Fair Labor Standards Act (FLSA) and the FMLA regulations. The District shall keep these records for no less than three years and make them available for inspection, copying, and transcription by representatives of the DOL upon request.

If the District is preserving records electronically, the District must comply with 29 CFR 825.500(b). A district that has eligible employees must maintain records with the data set forth at 29 CFR 825.500(c). A district that has no eligible employees must maintain just the data at 29 CFR 825.500(c)(1). For districts in a joint employment situation, see 29 CFR 825.500(e).

Records and documents relating to certifications, recertifications, or medical histories of employees or employees’ family members, created for purposes of FMLA, shall be maintained as confidential medical records in separate files/records from the usual personnel files. If the Americans with Disabilities Act (ADA) is also applicable, such records shall be maintained in conformance with ADA confidentiality requirements [see 29 CFR 1630.14(c)(1)], except as set forth in this section of the regulations.

29 CFR 825.500
The FMLA prohibits interference with an employee’s rights under the law, and with legal proceedings or inquiries relating to an employee's rights. 29 U.S.C. 2615; 29 CFR 825.220
Note: This policy addresses leave for an employee’s military service. For provisions on leaves in general, see DEC. For provisions regarding the Family and Medical Leave Act (FMLA), including FML for an employee seeking leave because of a relative’s military service, see DECA.

Any person who is absent from a position of employment by reason of voluntary or involuntary service in the uniformed services shall be entitled to certain reemployment rights and benefits under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) if:

1. The person (or an appropriate officer of the uniformed service in which such service is performed) has given advance written or verbal notice of such service to the District (unless notice is precluded by military necessity or is otherwise unreasonable or impossible);

2. The cumulative length of the absence and of all previous absences from a position of employment with the District does not exceed five years; and

3. The person reports to or submits an application for reemployment to the District and complies with the appropriate procedural requirements that apply under the circumstances.

For purposes of federal military leave, “uniformed services” means the Armed Forces; the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty; the commissioned corps of the Public Health Services; and any other category of persons designated by the President in time of war or emergency.

A person who is reemployed under USERRA is entitled to the seniority, and other rights and benefits determined by seniority, that the person had on the date of the commencement of uniformed service, plus the additional seniority, rights, and benefits that such person would have attained if the person had remained continuously employed.

The District is not required to reemploy a person if:

1. The District’s circumstances have so changed as to make reemployment impossible or unreasonable;

2. The reemployment of such person would impose an undue hardship on the District; or
3. The employment from which the person leaves to serve in the uniformed services is for a brief, nonrecurrent period and there is no reasonable expectation that such employment will continue indefinitely or for a significant period.

38 U.S.C. 4301, et. seq.

STATE LEAVE FOR MEMBER OF MILITARY OR RESCUE TEAM

SHORT TERM

An employee of the District who is a member of the state military forces, a reserve component of the United States Armed Forces, or a member of a state or federally authorized Urban Search and Rescue team shall be granted a paid leave of absence from the employee’s duties without loss of time, efficiency rating, vacation time, personal time, sick leave, or salary on all days during which the employee is engaged in authorized training or duty ordered or authorized by proper authority. Such leave shall not exceed 15 workdays in a federal fiscal year. Gov’t Code 431.005(a), (b)

CALLED TO DUTY

A member of the state military forces who is ordered to active state duty by the governor or other proper authority under state law is entitled to the same benefits and protections provided to persons performing service in the uniformed services under 38 U.S.C. 4301–4313 and 4316–4319 (USERRA) and to persons in the military service of the United States under 50 App. U.S.C. 501–536, 560, and 580–594, as those laws existed on April 1, 2003. Gov’t Code 431.017

LONG TERM

CHAPTER 431

The District may not terminate the employment of an employee who is a member of the military forces of this state or any other state because the employee is ordered to authorized training or duty by a proper authority. The employee is entitled to return to the same employment held when ordered to training or duty and may not be subjected to loss of time, efficiency rating, vacation time, or any benefit of employment during or because of the absence. The employee, as soon as practicable after release from duty, must give written or actual notice of intent to return to employment. Gov’t Code 431.006

CHAPTER 613

Any employee, other than a temporary employee, who leaves a position with the District to enter active military service is entitled to be reemployed by the District in the same position held at the time of the induction, enlistment, or order, or to a position of similar seniority, status, and pay. To be entitled to reemployment, the employee must be discharged, separated, or released from active military service under honorable conditions not later than the fifth anniversary after the date of induction, enlistment, or call to active military service and must be physically and mentally qualified to perform the duties of the position. Gov’t Code 613.001(3), .002
An employee who cannot perform the duties of the position because of a disability sustained during military service is entitled to reemployment in the District in a position that the employee can perform and that has like seniority, status, and pay as the former position, or the nearest possible seniority, status, and pay. Gov’t Code 613.003

To be reemployed, a veteran of the military must apply for reemployment not later than the 90th day after the date the veteran is discharged or released from active military service. Application must be made in writing to the Superintendent and have attached to it evidence of the veteran’s discharge, separation, or release from military service under honorable conditions. Gov’t Code 613.004

A person reemployed after active military service shall not be discharged without cause before the first anniversary of the date of the reemployment. Gov’t Code 613.005

“Military service” means service as a member of the Armed Forces of the United States, a reserve component of the Armed Forces of the United States, the Texas National Guard, or the Texas State Guard. Gov’t Code 613.001(2)

An employee with available personal leave is entitled to use the leave for compensation during a term of active military service. This provision applies to any personal or sick leave available under former law or provided by local policy.

The District may adopt a policy providing for paid leave for active military service as part of the consideration of employment.

Education Code 22.003(d), (e)
If funds are specifically appropriated or TEA identifies available funds, TEA shall establish a reimbursement program under which TEA provides funds to districts for the purpose of reimbursing classroom teachers and campus library media specialists who expend personal funds on classroom supplies.

The District shall allow each classroom teacher and campus library media specialist in the District who is reimbursed under the reimbursement program to use the funds at the teacher’s or specialist’s discretion, except that the funds must be used for the benefit of the District’s students.

The District may allow, but not require, teachers and campus library media specialists to pool their respective supply monies for the purchase of an item, as long as the item meets the student benefit criteria established by the District.

*Education Code 21.414; 19 TAC 61.1081(d)(3)*

Total reimbursement to an individual teacher or campus library media specialist in a single year from the Classroom Supply Reimbursement Grant Program may not exceed $200. Reimbursements from local funds may exceed the matching requirement (see below).

Funds for each grant period must be expended by the end of the grant period.

To be eligible to participate in the classroom supply reimbursement program, the District shall be required to:

1. Reapply to participate each year;
2. Account for funds in accordance with applicable state and federal requirements;
3. Match any funds provided to the District under the reimbursement program with local funds to be used for the same purpose. The District may not use funds received under the reimbursement program to replace local funds used by the District for the same purpose. Local funds may be donated or otherwise provided to the District by community groups, parent/teacher organizations, businesses, professional organizations, and others.
   a. “Local funds” are all funds over which the District exercises control or approval authority used to reimburse teachers for tangible items of direct benefit to students.
   b. Individual reimbursements from the Classroom Supply Reimbursement Grant Program must be matched with an equal amount of local funds.
4. Ensure that items purchased with grant funds are tangible items, of direct benefit to students. In order to participate in the classroom supply reimbursement program, the District's application must include a District policy that would ensure each teacher or campus library media specialist meets the requirement that an expenditure will benefit students;

5. Retain ownership of all durable goods purchased under this program. The District may develop a procedure allowing each teacher or campus library media specialist to retain ownership of goods of nominal value purchased with grant money; and

6. Return unexpended Classroom Supply Reimbursement Grant Program balances at the end of the state fiscal year for which they were awarded.

**PENALTIES**

A district found in noncompliance with TEA's rules regarding the Classroom Supply Reimbursement Grant Program must reimburse the state for funds unaccounted for or used for purposes not meeting the requirements of the statute.

A district found to have reduced its local expenditures may be required to refund the entire grant to the state.

**DISPUTE RESOLUTION AND APPEALS**

A determination by the Board of any dispute involving teacher or campus library media specialist reimbursement is final and may not be appealed to TEA, except as provided in Education Code 7.057. Nothing in this provision precludes TEA from recovering funds from the District pursuant to an audit.

A determination by TEA in the administration of this program is final and may not be appealed.

**Note:**


**19 TAC 61.1081**

An employee of the District who is engaged in official business may participate in the comptroller’s contract for travel services. *Gov’t Code 2171.055(f)*
An employee shall be reimbursed for reasonable, allowable expenses incurred in carrying out District business only with the prior approval of the employee’s immediate supervisor.

Reimbursement for authorized travel shall be in accordance with legal requirements.

Accounting records shall accurately reflect that no state or federal funds were used to reimburse travel expenses beyond those authorized for state employees.

Meals associated with required travel shall be reimbursed on a per diem basis.

For any authorized expense incurred, the employee shall submit a statement, with receipts to the extent feasible, except for meals, documenting actual expenses and in accordance with administrative procedures.
**TERMINATION OF EMPLOYMENT**

**DF (LEGAL)**

**Note:** For a detailed treatment of termination and nonrenewal of educator contracts, see policies DFAA and DFAB (Probationary Contracts), and DFBA and DFBB (Term Contracts).

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<thead>
<tr>
<th>WITHHOLDING INFORMATION</th>
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<tr>
<td>An attempt by any District employee to encourage or coerce a child to withhold information from the child’s parent is grounds for discharge or suspension under Education Code 21.104 (probationary contracts) and 21.211 (term contracts). <em>Education Code 26.008(b)</em></td>
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<tr>
<th>DISCHARGE OF CONVICTED EMPLOYEES</th>
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<tr>
<td>The District shall discharge an employee if the District obtains information through a criminal history record information (CHRI) review that:</td>
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<tr>
<td>1. The employee has been convicted of:</td>
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<tr>
<td>a. A felony under Penal Code Title 5;</td>
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<tr>
<td>b. An offense requiring registration as a sex offender under Code of Criminal Procedure Chapter 62; or</td>
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<tr>
<td>c. An offense under the laws of another state or federal law that is equivalent to an offense under paragraphs a or b; and</td>
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<tr>
<td>2. At the time the offense occurred, the victim of the offense was under 18 years of age or was enrolled in a public school.</td>
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<tr>
<th>EXCEPTION</th>
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<td>However, the District is not required to discharge an employee if the person committed an offense under Title 5, Penal Code, and:</td>
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<tr>
<td>1. The date of the offense is more than 30 years before June 15, 2007; and</td>
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<tr>
<td>2. The employee satisfied all terms of the court order entered on conviction.</td>
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<tr>
<th>CERTIFICATION TO SBEC</th>
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<tr>
<td>Each school year, the Superintendent shall certify to the Commissioner that the District has complied with the above provisions.</td>
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<th>SANCTIONS</th>
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<tr>
<td>The State Board for Educator Certification (SBEC) may impose a sanction on an educator who does not discharge an employee if the educator knows or should have known, through a criminal history record information review, that the employee has been convicted of an offense described above.</td>
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<tr>
<th>OPTIONAL TERMINATION</th>
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<tr>
<td>The District may discharge an employee if the District obtains information of the employee’s conviction of a felony or of a misdemeanor involving moral turpitude that the employee did not disclose to SBEC or the District. An employee so discharged is</td>
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considered to have been discharged for misconduct for purposes of Labor Code 207.044 (unemployment compensation).

*Education Code 22.085* [See DBAA]

If the District receives notice that SBEC has revoked the certificate of a person based on conviction for a felony under Penal Code Title 5 or an offense requiring registration as a sex offender, and the victim of the offense is under 18 years of age, the District shall:

1. Immediately remove the person whose certificate has been revoked from campus or from an administrative office, as applicable, to prevent the person from having any contact with a student; and

2. If the person is employed under a probationary, continuing, or term contract:
   a. Suspend the person without pay;
   b. Provide the person with written notice that the person’s contract is void [see NOTICE TO EMPLOYEE, below]; and
   c. Terminate the employment of the person as soon as practicable.

*Education Code 21.058(a), (c)*

If the District becomes aware that a person employed by the District under a probationary, continuing, or term contract has been convicted of or received deferred adjudication for a felony offense, and the person is not subject to the mandatory termination provision above, the District may:

1. Suspend the person without pay;

2. Provide the person with written notice that the person’s contract is void [see NOTICE TO EMPLOYEE, below]; and

3. Terminate the employment of the person as soon as practicable.

*Education Code 21.058(c-1)*

A person’s probationary, continuing, or term contract is void if the District provides written notice to the person, under the mandatory or discretionary termination provisions above, that the person’s contract is void. *Education Code 21.058(c-2)*

Action taken by the District under the mandatory or discretionary terminations provisions above is not subject to appeal under Education Code Chapter 21 and the notice and hearing requirements
of Chapter 21 do not apply to the action. *Education Code 21.058(e)*

### INVALID OR EXPIRED CERTIFICATION

An employee’s probationary or term contract is void if the employee:

1. Does not hold a valid certificate or permit issued by SBEC;
2. Fails to fulfill the requirements necessary to renew or extend the employee’s temporary, probationary, or emergency certificate or any other certificate or permit issued under Education Code Chapter 21, Subchapter B; or
3. Fails to comply with any requirement under Education Code Chapter 22, Subchapter C [criminal history review, see DBAA], if the failure results in suspension or revocation of the employee’s certificate.

*Education Code 21.0031(a)*

A certificate or permit is not considered to have expired if:

1. The employee has completed the requirements for renewal of the certificate or permit;
2. The employee submitted the request for renewal before the expiration date; and
3. The date the certificate or permit would have expired is before the date SBEC takes action to approve the renewal of the certificate or permit.

*Education Code 21.0031(f)*

If the District has knowledge that an employee’s contract is void under Education Code 21.0031(a), the District may:

1. Terminate the employee;
2. Suspend the employee with or without pay; or
3. Retain the employee for the remainder of the school year on an at-will employment basis in a position that does not require a contract under Education Code 21.002, at the employee’s existing rate of pay or at a reduced rate.

The employee is not entitled to the minimum salary prescribed by Education Code 21.402.

*Education Code 21.0031(b)*

### EXCEPTION

The District may not terminate or suspend an employee under 21.0031(b) because of the employee’s lack of a valid certificate or permit, or failure to renew or extend a certificate or permit, if:
1. The employee requests an extension from SBEC to renew, extend, or otherwise validate the employee’s certificate or permit; and

2. Not later than the 10th day after the date the contract is void, the employee takes necessary measures to renew, extend, or otherwise validate the employee’s certificate or permit, as determined by SBEC.

*Education Code 21.0031(b-1)*

**NO APPEAL OR CHAPTER 21 HEARING**

The District’s decision under Education Code 21.0031(b) is not subject to appeal under Education Code Chapter 21, and the notice and hearing requirements of that chapter do not apply to the decision.

*Education Code 21.0031*

**APPLICABILITY**

These void contract provisions do not affect the rights and remedies of a party in an at-will employment relationship and do not apply to a certified teacher assigned to teach a subject for which the teacher is not certified. *Education Code 21.0031; Nunez v. Simms, 341 F.3d 385 (5th Cir. 2003)*

**REPORT TO SBEC**

In addition to the reporting requirement under Family Code 261.101 [see FFG], the Superintendent must file a written report with SBEC not later than the seventh day after the Superintendent first obtains or has knowledge of information indicating that a certificate holder’s employment at the District was terminated based on a determination that the certificate holder:

1. Sexually or physically abused or otherwise committed an unlawful act with a student or minor;

2. Possessed, transferred, sold, or distributed a controlled substance, as defined by Health and Safety Code Chapter 481 or by 21 U.S.C. Section 801 et seq.;

3. Illegally transferred, appropriated, or expended funds or other property of the District;

4. Attempted by fraudulent or unauthorized means to obtain or alter a professional certificate or permit for the purpose of promotion or additional compensation;

5. Committed a criminal offense or any part of a criminal offense on school property or at a school-sponsored event; or

6. Solicited or engaged in sexual conduct or a romantic relationship with a student or minor.
DEFINITIONS

"Abuse" includes the following acts or omissions:

1. Mental or emotional injury to a student or minor that results in an observable and material impairment in the student’s or minor’s development, learning, or psychological functioning;

2. Causing or permitting a student or minor to be in a situation in which the student or minor sustains a mental or emotional injury that results in an observable and material impairment in the student’s or minor’s development, learning, or psychological functioning;

3. Physical injury that results in substantial harm to a student or minor, or the genuine threat of substantial harm from physical injury to the student or minor, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline; or

4. Sexual conduct harmful to a student’s or minor’s mental, emotional, or physical welfare.

"Solicitation of a romantic relationship" means deliberate or repeated acts that can be reasonably interpreted as soliciting a relationship characterized by an ardent emotional attachment or pattern of exclusivity. Acts that constitute the solicitation of a romantic relationship include:

1. Behavior, gestures, expressions, communications, or a pattern of communication with a student that is unrelated to the educator’s job duties and that may reasonably be interpreted as encouraging the student to form an ardent or exclusive emotional attachment to the educator, including statements of love, affection, or attraction. When evaluating whether communications constitute the solicitation of a romantic relationship, the following may be considered:
   a. The nature of the communications;
   b. The timing of the communications;
   c. The extent of the communications;
   d. Whether the communications were made openly or secretly;
   e. The extent to which the educator attempted to conceal the communications;
f. If the educator claims to be counseling a student, TEA staff may consider whether the educator’s job duties included counseling, whether the educator reported the subject of the counseling to the student’s guardians or to the appropriate school personnel, or, in the case of alleged abuse or neglect, whether the educator reported the abuse or neglect to the appropriate law enforcement agencies; and

g. Any other communications tending to show that the educator solicited a romantic relationship with a student.

2. Making inappropriate comments about a student’s body.

3. Making sexually demeaning comments to a student.


5. Requesting details of a student’s sexual history.

6. Requesting a date.

7. Engaging in conversations regarding the sexual problems, preferences, or fantasies of either party.

8. Inappropriate hugging, kissing, or excessive touching.

9. Suggestions that a romantic relationship is desired after the student graduates, including post-graduation plans for dating or marriage.

10. Any other acts tending to show that the educator solicited a romantic relationship with the student, including providing the student with drugs or alcohol.

*Education Code 21.006; 19 TAC 249.14*
DISCHARGE

Any probationary contract employee may be discharged at any time for good cause as determined by the Board. “Good cause” is the failure to meet the accepted standards of conduct for the profession as generally recognized and applied in similarly situated school districts in this state. *Education Code 21.104(a)*

**Note:** See DF regarding circumstances in which a certified employee’s dismissal must be reported to the State Board for Educator Certification (SBEC).

SUSPENSION

The District may, for good cause as defined above, suspend an employee without pay in lieu of discharge or pending discharge. The period of suspension may not extend beyond the end of the current school year. *Education Code 21.104(b)*

NOTICE

Before any probationary contract employee is dismissed or suspended without pay for good cause, the employee shall be given reasonable notice in writing of the charges against him or her and an explanation of the District’s evidence, set out in sufficient detail to fairly enable the employee to show any error that may exist. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, (1985)

HEARING

If the employee is protesting proposed action to suspend or terminate a probationary contract for good cause, under Education Code 21.104, the employee is entitled to a hearing before an independent hearing examiner under Education Code Chapter 21, Subchapter F [see DFD].

EXCEPTION

If the employee is protesting proposed action to terminate a probationary contract before the end of the contract period on the basis of a financial exigency declared under Education Code 44.011 [see CEA], the employee is entitled to a hearing in the manner provided under Education Code 21.207 for nonrenewal of a term contract [see DFBB] or a hearing under Education Code Chapter 21, Subchapter F, as determined by the Board.

*Education Code 21.1041*
A probationary contract employee may be suspended with pay or placed on administrative leave by the Superintendent during an investigation of alleged misconduct by the employee or at any time the Superintendent determines that the District’s best interest will be served by the suspension or administrative leave.
### GROUNDS FOR TERMINATION

The Board may terminate a probationary contract at the end of the contract period if in the Board’s judgment such termination will serve the best interests of the District.

### NOTICE

The Board shall give the employee notice of its decision to terminate the employment not later than the tenth day before the last day of instruction required under the contract.

The notice must be delivered personally by hand delivery on the campus at which the employee is employed. If the employee is not present on the campus on the date that hand delivery is attempted, the notice must be mailed by prepaid certified mail or delivered by express delivery service to the employee’s address of record with the District. Notice that is postmarked on or before the tenth day before the last day of instruction is considered timely for these purposes.

### NO APPEAL

The Board’s decision to terminate a probationary contract at the end of a contract period is final and may not be appealed.

*Education Code 21.103(a)*

### FAILURE TO NOTIFY

If the Board fails to give notice of its decision to terminate a probationary contract within the time prescribed, the Board must employ the employee for the following school year in the same capacity under:

1. A probationary contract, if the person has been employed under a probationary contract for less than three consecutive school years; or

2. A continuing or term contract, according to District policy, if the person has been employed under a probationary contract for three consecutive school years.

*Education Code 21.103(b)*
In lieu of discharging a continuing contract employee, terminating a term contract employee, or not renewing a term contract, the District may, with written consent of the employee, return the employee to probationary contract status.

**AFTER BOARD PROPOSAL**

Except as provided below, an employee may agree to be returned to probationary status only after receiving written notice that the Board has proposed discharge, termination, or nonrenewal. [See DF series]

**AFTER NOTICE FROM SUPERINTENDENT**

An employee may agree to be returned to probationary contract status after receiving written notice of the Superintendent’s intent to recommend discharge, termination, or nonrenewal.

**NOTICE**

The notice must inform the employee of the District’s offer to return the employee to probationary contract status, the period during which the employee may consider the offer, and the employee’s right to seek counsel. The District must provide the employee at least three business days after the employee receives the notice to agree to be returned to probationary contract status. This provision does not require the Superintendent to provide notice of intent to recommend discharge, termination, or nonrenewal.

**NEW PROBATIONARY PERIOD**

An employee returned to probationary status must serve a new probationary period as if the employee were employed by the District for the first time.

*Education Code 21.106*
The Board may, for good cause as determined by the Board, suspend an employee without pay:

1. Pending discharge, or
2. In lieu of termination.

The suspension may not extend beyond the end of the school year. *Education Code 21.211(b)*

If an employee is not discharged after being suspended without pay pending discharge, the employee is entitled to back pay for the period of suspension. *Education Code 21.211(c)*

The Board may terminate a term contract and discharge a term contract employee at any time for:

1. Good cause as determined by the Board; or
2. A financial exigency that requires a reduction in personnel. *Education Code 21.211(a)*

Before any term contract employee is dismissed for good cause, the employee shall be given reasonable notice in writing of the charges against him or her and an explanation of the District's evidence, set out in sufficient detail to fairly enable the employee to show any error that may exist. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (1985)

If a term contract employee desires a hearing before an independent hearing examiner, the employee must file a written request with the Commissioner not later than the 15th day after the date the employee receives notice of the proposed termination or suspension without pay. The employee must provide the District with a copy of the request and must provide the Commissioner with a copy of the notice.

The parties may agree in writing to extend by not more than ten days the deadline for requesting a hearing. *Education Code 21.251(a), 21.253 [See DFD]*

An employee who is protesting proposed action to terminate a term contract at any time on the basis of a financial exigency declared under Education Code 44.011 [see CEA] that requires a reduction in personnel must notify the Board in writing not later than the tenth day after the date the employee receives notice of the proposed action. The employee is entitled to a hearing in the manner provided under Education Code 21.207 for nonrenewal of a term contract [see DFBB] or a hearing under Education Code Chapter 21, Subchapter F, as determined by the Board. *Education Code 21.159*
SUSPENSION WITH PAY

The employee may be suspended with pay pending the outcome of the dismissal hearing. *Moore v. Knowles*, 482 F.2d 1069 (5th Cir. 1973)

**Note:** See DF regarding circumstances in which a certified employee’s dismissal must be reported to the State Board for Educator Certification (SBEC).
A term contract employee may be suspended with pay or placed on administrative leave by the Superintendent during an investigation of alleged misconduct by the employee or at any time the Superintendent determines that the District’s best interest will be served by the suspension or administrative leave.
The Board may terminate a term contract for a financial exigency that requires a reduction in personnel. Education Code 21.211(a)

The Board shall establish by policy reasons for nonrenewal at the end of a school year. Education Code 21.203(b)

Before making a decision not to renew a term contract, the Board shall consider the most recent evaluations if the evaluations are relevant to the reason for the Board’s action. Education Code 21.203(a) [See DNA]

Not later than the tenth day before the last day of instruction in a school year, the Board shall notify in writing each employee whose contract is about to expire whether the Board proposes to renew or not renew the contract.

The notice must be delivered personally by hand delivery to the employee on the campus at which the employee is employed. If the employee is not present on the campus on the date that hand delivery is attempted, the notice must be mailed by prepaid certified mail or delivered by express delivery service to the employee’s address of record with the District. Notice that is postmarked on or before the tenth day before the last day of instruction is considered timely for these purposes.

The Board’s failure to give timely notice of a proposed renewal or nonrenewal constitutes an election to employ the term contract employee in the same professional capacity for the following school year.

Education Code 21.206

If the employee desires a hearing after receiving notice of the proposed nonrenewal, the employee shall notify the Board in writing not later than the 15th day after:

1. The date the employee receives hand delivery of the notice of proposed nonrenewal; or
2. The date the notice is delivered to the employee’s address of record with the District, if the notice is mailed by prepaid certified mail or delivered by express delivery service.

The Board shall provide for a hearing to be held not later than the 15th day after receiving written notice from the employee requesting a hearing unless the parties agree in writing to a different date. The hearing shall be closed unless the employee requests an open hearing and shall be conducted in accordance with rules adopted by the Board.
In a district with an enrollment of at least 5,000 students, the Board may designate an attorney licensed to practice law in this state to hold the hearing on behalf of the Board, to create a hearing record for the Board’s consideration and action, and to recommend an action to the Board.

The designee may not be employed by the District and neither the designee nor a law firm with which the designee is associated may be serving as an agent or representative of the District, an employee in a dispute between the District and an employee, or an organization of school employees, school administrators, or school boards.

Not later than the 15th day after completion of the hearing, the designee shall provide to the Board a record of the hearing and the designee’s recommendation of whether the contract should be renewed or not renewed.

The Board shall consider the record of the hearing and the designee’s recommendation at the first Board meeting for which notice can be posted, in compliance with the Texas Open Meetings Act, following the receipt of the record and recommendation from the designee, unless the parties agree in writing to a different date.

At the meeting, the Board shall consider the hearing record and the designee’s recommendation and allow each party to present an oral argument to the Board. The Board by written policy may limit the amount of time for oral argument. The policy must provide equal time for each party. The Board may obtain advice concerning legal matters from an attorney who has not been involved in the proceedings. The Board may accept, reject, or modify the designee’s recommendation.

The Board shall notify the employee in writing of the Board’s decision not later than the 15th day after the date of the meeting.

*Education Code 21.207(b-1)*

At the hearing before the Board or the Board’s designee, the employee may:

1. Be represented by a representative of the employee’s choice;
2. Hear the evidence supporting the reason for nonrenewal;
3. Cross-examine adverse witnesses; and
4. Present evidence.

*Education Code 21.207(c)*

Following the hearing, the Board shall take the appropriate action and notify the employee in writing of that action within 15 days following the conclusion of the hearing.

If the employee fails to request a hearing, the Board shall take the appropriate action and notify the employee in writing of that action not later than the 30th day after the date the notice of proposed nonrenewal was sent.

*Education Code 21.208*

An employee aggrieved by a decision of the Board to nonrenew a term contract may appeal to the Commissioner for a review of the Board’s decision. *Education Code 21.209*
REASONS

The recommendation to the Board and its decision not to renew a contract under this policy shall not be based on an employee’s exercise of Constitutional rights or based unlawfully on an employee’s race, color, religion, sex, national origin, disability, or age. Reasons for proposed nonrenewal of an employee’s term contract shall be:

1. Deficiencies pointed out in observation reports, appraisals or evaluations, supplemental memoranda, or other communications.

2. Failure to fulfill duties or responsibilities.

3. Incompetency or inefficiency in the performance of duties.

4. Inability to maintain discipline in any situation in which the employee is responsible for the oversight and supervision of students.

5. Insubordination or failure to comply with official directives.

6. Failure to comply with Board policies or administrative regulations.

7. Excessive absences.

8. Conducting personal business during school hours when it results in neglect of duties.

9. Reduction in force because of financial exigency. [See DFF]

10. Reduction in force because of a program change. [See DFF]

11. A decision by a campus intervention team that the employee not be retained at a reconstituted campus. [See AIC]

12. The employee is not retained at a campus that has been repurposed in accordance with law. [See AIC]

13. Drunkenness or excessive use of alcoholic beverages; or possession, use, or being under the influence of alcohol or alcoholic beverages while on school property, while working in the scope of the employee’s duties, or while attending any school- or District-sponsored activity.

14. The illegal possession, use, manufacture, or distribution of a controlled substance, a drug, a dangerous drug, hallucinogens, or other substances regulated by state statutes.

15. Failure to meet the District’s standards of professional conduct.

16. Failure to report any arrest, indictment, conviction, no contest or guilty plea, or other adjudication for any felony, any crime.
involving moral turpitude, or other offense listed at DH(LOCAL). [See DH]

17. Conviction of or deferred adjudication for any felony, any crime involving moral turpitude, or other offense listed at DH(LOCAL); or conviction of a lesser included offense pursuant to a plea when the original charged offense is a felony. [See DH]

18. Failure to comply with reasonable District requirements regarding advanced coursework or professional improvement and growth.

19. Disability, not otherwise protected by law, that prevents the employee from performing the essential functions of the job.

20. Any activity, school-connected or otherwise, that, because of publicity given it, or knowledge of it among students, faculty, and community, impairs or diminishes the employee’s effectiveness in the District.

21. Any breach by the employee of an employment contract or any reason specified in the employee’s employment contract.

22. Failure to maintain an effective working relationship, or maintain good rapport, with parents, the community, or colleagues.

23. A significant lack of student progress attributable to the educator.

24. Behavior that presents a danger of physical harm to a student or to other individuals.

25. Assault on a person on school property or at a school-related function, or on an employee, student, or student’s parent regardless of time or place.

26. Use of profanity in the course of performing any duties of employment, whether on or off school premises, in the presence of students, staff, or members of the public, if reasonably characterized as unprofessional.

27. Falsification of records or other documents related to the District’s activities.

28. Falsification or omission of required information on an employment application.

29. Misrepresentation of facts to a supervisor or other District official in the conduct of District business.
30. Failure to fulfill requirements for certification, including passing certification examinations required by state law for the employee’s assignment.

31. Failure to achieve or maintain “highly qualified” status as required for the employee’s assignment.

32. Failure to fulfill the requirements of a deficiency plan under an Emergency Permit, a Special Assignment Permit, or a Temporary Classroom Assignment Permit.

33. Any attempt to encourage or coerce a child to withhold information from the child’s parent or from other District personnel.

34. Any reason that makes the employment relationship void or voidable, such as a violation of federal, state, or local law.

35. Any reason constituting good cause for terminating the contract during its term.

**RECOMMENDATIONS FROM ADMINISTRATION**

Administrative recommendations for renewal or proposed nonrenewal of professional employee contracts shall be submitted to the Superintendent. A recommendation for proposed nonrenewal shall be supported by any relevant documentation. The final decision on the administrative recommendation to the Board on each employee’s contract rests with the Superintendent.

**SUPERINTENDENT’S RECOMMENDATION**

The Superintendent shall prepare lists of employees whose contracts are recommended for renewal or proposed nonrenewal by the Board. Supporting documentation, if any, and reasons for the recommendation shall be submitted for each employee recommended for proposed nonrenewal. The Board shall consider such information, as appropriate, in support of recommendations for proposed nonrenewal and shall then act on all recommendations.

**NOTICE OF PROPOSED NONRENEWAL**

After the Board votes to propose nonrenewal, the Superintendent or designee shall deliver written notice of proposed nonrenewal in accordance with law.

If the notice of proposed nonrenewal does not contain a statement of the reason or all of the reasons for the proposed action, and the employee requests a hearing, the District shall give the employee notice of all reasons for the proposed nonrenewal a reasonable time before the hearing. The initial notice or any subsequent notice shall contain the hearing procedures.

**REQUEST FOR HEARING**

If the employee desires a hearing after receiving the notice of proposed nonrenewal, the employee shall notify the Board in writing not later than the 15th day after the date the employee received the notice of proposed nonrenewal.
When a timely request for a hearing on a proposed nonrenewal is received by the presiding officer, the Board shall notify the employee whether the hearing will be conducted by the Board [see HEARING BY THE BOARD, below] or an attorney designated by the Board [see HEARING BY AN ATTORNEY DESIGNATED BY THE BOARD, below].

The hearing shall be held not later than the 15th day after receipt of the request, unless the parties mutually agree to a delay. The employee shall be given notice of the hearing date as soon as it is set.

Unless the employee requests that the hearing be open, the hearing shall be conducted in closed meeting with only the members of the Board, the employee, the Superintendent, their representatives, and such witnesses as may be called in attendance. Witnesses may be excluded from the hearing until called to present evidence. The employee and the administration may choose a representative. Notice, at least five days in advance of the hearing, shall be given by each party intending to be represented, including the name of the representative. Failure to give such notice may result in postponement of the hearing.

The conduct of the hearing shall be under the presiding officer’s control and shall generally follow the steps listed below:

1. After consultation with the parties, the presiding officer shall impose reasonable time limits for presentation of evidence and closing arguments.

2. The hearing shall begin with the administration’s presentation, supported by such proof as it desires to offer.

3. The employee may cross-examine any witnesses for the administration.

4. The employee may then present such testimonial or documentary proof, as desired, to offer in rebuttal or general support of the contention that the contract be renewed.

5. The administration may cross-examine any witnesses for the employee and offer rebuttal to the testimony of the employee’s witnesses.

6. Closing arguments may be made by each party.

A record of the hearing shall be made.

The Board may consider only evidence presented at the hearing. After all the evidence has been presented, if the Board determines that the reasons given in support of the recommendation to not re-
new the employee's contract are lawful, supported by the evidence, and not arbitrary or capricious, it shall so notify the employee by a written notice not later than the 15th day after the date on which the hearing is concluded. This notice shall also include the Board's decision on renewal, which decision shall be final.

The hearing must be private unless the teacher requests in writing that the hearing be public, except that the attorney may close the hearing to maintain decorum. If the teacher does not request a public hearing, only the attorney designated by the Board, the employee, the Superintendent, their representatives, and witnesses will be permitted to be in attendance, and witnesses may be excluded from the hearing until called to present evidence. The employee and the administration may choose a representative. Notice, at least five days in advance of the hearing, shall be given by each party intending to be represented, including the name of the representative. Failure to give such notice may result in postponement of the hearing.

The conduct of the hearing shall be under the control of the attorney designated by the Board and shall generally follow the steps listed below:

1. After consultation with the parties, the attorney shall impose reasonable time limits for presentation of evidence and closing arguments.

2. The hearing shall begin with the administration's presentation, supported by such proof as it desires to offer.

3. The employee may cross-examine any witnesses for the administration.

4. The employee may then present such testimonial or documentary proof, as desired, to offer in rebuttal or general support of the contention that the contract be renewed.

5. The administration may cross-examine any witnesses for the employee and offer rebuttal to the testimony of the employee's witnesses.

6. Closing arguments may be made by each party.

A record of the hearing shall be made.

Not later than the 15th day after the completion of the hearing, the attorney shall provide to the Board a record of the hearing and his or her recommendation on renewal.

The Board shall consider the record of the hearing and the attorney's recommendation at the first Board meeting for which notice
can be posted, unless the parties agree in writing to a different date. The Board shall notify the employee of the meeting date as soon as it is set. At the meeting, the Board shall allow each party an equal amount of time to present oral arguments. The Board shall notify the employee in writing of the Board’s decision on renewal not later than the 15th day after the date of the meeting.

NO HEARING

If the employee fails to request a hearing, the Board shall take the appropriate action and notify the employee in writing of that action not later than the 30th day after the date the notice of proposed nonrenewal was sent.
NOTICE OF PROPOSED CONTRACT NONRENEWAL  
(FOR HEARINGS CONDUCTED BY THE BOARD)

Date: ______________________________
Name: _________________________________________________________________
Address: __________________________________________________________________
City/State/Zip: __________________________________________________________________

Dear ________________________:

YOU ARE HEREBY NOTIFIED that the Superintendent of ________________________ ISD has recommended to the Board of Trustees at a lawfully called meeting of the Board of Trustees on (date) ________________________________ that your employment contract as (job title) ________________________________ in the District not be renewed for the succeeding school year, and the Board voted to propose the nonrenewal.

This notice is given pursuant to the provisions of Section 21.206 of the Texas Education Code.

The recommendation not to renew your contract is being made for the following reasons:

[List all reasons in detail]

If you desire a hearing, not later than the 15th day after receipt of this written notice, you must notify the Board of Trustees in writing of such request. The Board shall provide for a hearing to be held not later than the 15th day after receipt of your notice requesting a hearing. Such hearing shall be closed unless you request an open hearing. The Board may appoint an attorney to hold the hearing on behalf of the Board and, if so, will notify you. If you fail to make a timely request for a hearing, the Board may proceed to make a determination upon the Superintendent’s recommendation not later than the 30th day after the date the Board sends you notice of the proposed nonrenewal.

If you have any questions concerning any of the reasons supporting the proposed action to nonrenew your contract, please advise the Superintendent in writing.

Attached to this notice is a copy of the District’s policy on nonrenewal of term contracts, containing the rules for the hearing.

This notice dated at (City/State/Zip): ____________________________________________.

Date: ______________________________  By: ___________________________________

President, Board of Trustees

_______________________________ ISD
APPLICABILITY

This hearing process applies only if an employee requests a hearing after receiving notice of a proposed decision to:

1. Terminate a continuing contract at any time, except as provided below;

2. Terminate a probationary or term contract before the end of the contract period, except as provided below; or

3. Suspend without pay.

EXCEPTION

This hearing process does not apply to a decision to:

1. Terminate a probationary contract at the end of the contract term;

2. Not renew a term contract, unless the Board has adopted this process for nonrenewals; or

3. Terminate a probationary or term contract before the end of the contract period or terminate a continuing contract at any time, based on a financial exigency declared under Education Code 44.011 [see CEA] that requires a reduction in personnel, unless the Board has decided to use this hearing process.

Education Code 21.251

REQUEST FOR HEARING

Not later than the 15th day after the date the employee receives notice of one of the proposed contract actions listed above, the employee must file a written request with the Commissioner for a hearing before a hearing examiner. The employee must provide the District with a copy of the request and must provide the Commissioner with a copy of the notice. The parties may agree in writing to extend by not more than ten days the deadline for requesting a hearing. Education Code 21.253

ASSIGNMENT OF HEARING EXAMINER BY AGREEMENT

The parties may agree to select a hearing examiner from the list maintained by the Commissioner or a person who is not certified to serve as a hearing examiner, provided that person is licensed to practice law in Texas. If the parties agree on a hearing examiner the parties shall, before the date the Commissioner is permitted to assign a hearing examiner, notify the Commissioner in writing of the agreement, including the name of the hearing examiner selected.

BY APPOINTMENT

If the parties do not select a hearing examiner by agreement, the Commissioner shall assign the hearing examiner not earlier than the sixth business day and not later than the tenth business day after the date on which the Commissioner receives the request for
a hearing. When a hearing examiner has been assigned, the Commissioner shall notify the parties immediately.

REJECTION

The parties may agree to reject a hearing examiner for any reason and either party is entitled to reject an assigned hearing examiner for cause. A rejection must be in writing and filed with the Commissioner not later than the third day after the date of notification of the hearing examiner’s assignment. If the parties agree to reject the hearing examiner or if the Commissioner determines that one party has good cause for the rejection, the Commissioner shall assign another hearing examiner.

FINALITY OF DECISION

After the employee receives notice of the proposed contract action, the parties may agree in writing that the hearing examiner’s decision be final and nonappealable on all or some issues.

Education Code 21.254

POWERS OF HEARING EXAMINER

The hearing examiner may issue subpoenas, administer oaths, rule on motions and the admissibility of evidence, maintain decorum, schedule and recess the proceedings, allow the parties to take depositions or use other means of discovery, and make any other orders as provided by Commissioner rule.

CONDUCT OF HEARING

The hearing and any depositions must be held within the geographical boundaries of the District or at the regional education service center that serves the District.

Education Code 21.255

SCHEDULE RESTRICTION

A hearing before a hearing examiner may not be held on a Saturday, Sunday, or a state or federal holiday, unless all parties agree. Education Code 21.257(c)

PRIVATE

A hearing before a hearing examiner shall be private unless the employee makes a written request for a public hearing.

EXCEPTION

If necessary to maintain decorum, the hearing examiner may close a hearing that an employee has requested be public.

PROTECTION OF WITNESSES

To protect the privacy of a witness who is a child, the hearing examiner may close the hearing to receive the testimony or order that the testimony be presented by procedures in Article 38.071, Code of Criminal Procedure.

EMPLOYEE RIGHTS

At the hearing, the employee has the right to:

1. Be represented by a representative of the employee’s choice;
2. Hear the evidence on which the charges are based;
3. Cross-examine each adverse witness; and
4. Present evidence.

The hearing is not subject to the Administrative Procedure Act.

The hearing shall be conducted in the same manner as a trial without a jury in state district court. A certified shorthand reporter shall record the hearing.

**EVIDENCE**

The Texas Rules of Civil Evidence shall apply at the hearing. An evaluation or appraisal of the teacher is presumed to be admissible at the hearing. The hearing examiner’s findings of fact and conclusions of law shall be presumed to be based only on admissible evidence.

**BURDEN OF PROOF**

The District has the burden of proof by a preponderance of the evidence at the hearing.

*Education Code 21.256*

**COSTS**

The District shall bear the cost of the services of the hearing examiner and certified shorthand reporter and the production of any original hearing transcript. Each party shall bear its costs of discovery, if any, and its attorney's fees. *Education Code 21.255(e)*

**RECOMMENDATION**

Not later than the 60th day after the date on which the Commissioner receives a request for a hearing before a hearing examiner, the hearing examiner shall complete the hearing and make a written recommendation. The recommendation must include findings of fact and conclusions of law. The recommendation may include a proposal for granting relief, including reinstatement, back pay, or employment benefits. The proposal for relief may not include attorney’s fees or other costs associated with the hearing or appeals from the hearing. The hearing examiner shall send a copy of the recommendation to each party, the Board President, and the Commissioner.

**WAIVER OF DEADLINE**

The parties may agree in writing to extend by not more than 45 days the right to a recommendation by the date specified above.

*Education Code 21.257*

**CONSIDERATION**

The Board or a designated subcommittee shall consider the hearing examiner’s record and recommendation at the first Board meeting for which notice can be posted in compliance with the open meetings laws. The meeting must be held not later than the 20th day after the date that the Board President receives the hearing examiner’s recommendation and record.

**ORAL ARGUMENT AND RECORDING**

At the meeting, the Board or subcommittee shall allow each party to present an oral argument to the Board or subcommittee. The Board may, by written policy, limit the amount of time for oral argu-
ment, provided equal time is allotted each party. A certified shorthand reporter shall record any such oral argument.

LEGAL ADVICE

The Board or subcommittee may obtain advice from an attorney who has not been involved in the proceedings.

*Education Code 21.258, .260*

DECISION

Not later than the tenth day after the date on which the meeting to consider the hearing examiner’s recommendation is held, the Board or subcommittee shall announce its decision, which must include findings of fact and conclusions of law, and may include a grant of relief.

The Board or subcommittee may adopt, reject, or change the hearing examiner’s conclusions of law or proposal for granting relief. A determination by the hearing examiner regarding good cause for the suspension of an employee without pay or the termination of a probationary, continuing, or term contract is a conclusion of law and may be adopted, rejected, or changed by the Board or Board subcommittee.

The Board may reject or change a finding of fact made by the hearing examiner:

1. Only after reviewing the record of the proceedings; and
2. Only if the finding of fact is not supported by substantial evidence.

The Board or subcommittee shall state in writing the reason for and legal basis for a change or rejection.

*Education Code 21.257, .259*

RECORDING

A certified shorthand reporter shall record the announcement of the decision. The District shall bear the cost of the reporter’s services. *Education Code 21.260*

RECORD OF PROCEEDINGS

The Commissioner shall consider the appeal solely on the basis of the local record and may not consider any additional evidence or issue. *Education Code 21.301(c)*

The record of the proceedings before the independent hearing examiner shall include:

1. The transcripts of proceedings at the local level;
2. All evidence admitted;
3. All offers of proof;
4. All written pleadings, motions, and intermediate rulings;
5. A description of matters officially noticed;
6. If applicable, the recommendation of the independent hearing examiner;
7. The transcript of the oral argument before the Board or Board subcommittee;
8. The decision of the Board or Board subcommittee; and
9. If applicable, the Board or Board subcommittee’s written reasons for changing the recommendation of the independent hearing examiner.

19 TAC 157.1072(e)
TIME LIMITS FOR ORAL ARGUMENT

The Board shall consider the hearing examiner’s record and recommendation at the first Board meeting for which notice can be posted in compliance with the open meetings laws.

The Board shall allow ten minutes per party for oral argument. Administration shall be offered the opportunity to present argument first and may use a portion of the designated time for rebuttal after the other party has presented argument.

The Board reserves the right to grant additional time in equal amount to both parties, depending on the complexity of the issues and solely at the Board’s discretion.
**TERMINATION OF EMPLOYMENT**

**RESIGNATION**

An educator employed under a probationary contract for the following school year, or under a term or continuing contract, may relinquish the position and leave District employment at the end of the school year without penalty by filing a written resignation with the Board or the Board’s designee not later than the 45th day before the first day of instruction of the following school year.

A written resignation mailed by prepaid certified or registered mail to the Board President or the Board’s designee at the post office address of the District is considered filed at the time of mailing.

*Education Code 21.105(a), .160(a), .210(a)*

An unequivocal resignation filed not later than the 45th day before the first day of instruction of the following school year is effective upon filing with the District and the District cannot reject such a resignation. The resignation cannot be withdrawn by the teacher based on an argument that the District has not accepted the resignation. *Fantroy v. Dallas Indep. Sch. Dist.*, Tex. Comm’r of Educ. Decision No. 034-R9-0206 (Mar. 5, 2009); *Garcia v. Miles Indep. Sch. Dist.*, Tex. Comm’r of Educ. Decision No. 055-RI-503 (Nov. 30, 2006)

RESIGNATION WITH CONSENT

The educator may resign, with the consent of the Board or the Board’s designee, at any other time. *Education Code 21.105(b), .160(b), .210(b)*

SANCTIONS FOR ABANDONMENT OF CONTRACT

On written complaint by the District, the State Board for Educator Certification (SBEC) may impose sanctions against an educator who is employed under a probationary contract, or under a continuing or term contract for the following school year, and who:

1. Resigns;
2. Fails without good cause to comply with the resignation deadline or the provision regarding resignation by consent; and
3. Fails without good cause to perform the contract.

*Education Code 21.105(c), .160(c), .210(c)*


SBEC shall not pursue sanctions against an educator who is alleged to have abandoned his or her contract unless the Board:
1. Renders a finding that good cause did not exist for the employee's resignation; and


This deadline applies even if the District does not accept the educator’s written resignation. If the educator does not submit a written resignation, the employing district may determine the effective resignation date for purposes of submitting a complaint to SBEC. The effective resignation date shall not be later than 14 days after the educator fails to appear for work without District permission under the terms of the contract.

19 TAC 249.14(f)

NOTICE TO SBEC

In addition to the reporting requirement under Family Code 261.101 [see FFG], the Superintendent must file a written report with SBEC not later than the seventh day after the Superintendent first obtains or has knowledge of information indicating that an educator resigned and reasonable evidence supported a recommendation by the Superintendent to terminate the educator because he or she committed one of the acts specified at Education Code 21.006(b).

Before accepting the educator’s resignation, the Superintendent shall inform the educator in writing that a report will be filed which may result in sanctions against the employee’s certificate.

The Superintendent shall notify the Board before filing a report of a resignation with SBEC.

Education Code 21.006(b), (c), (d); 19 TAC 249.14(d) [See DF, DH]

INVESTIGATION

The Superintendent shall complete an investigation of an educator that is based on reasonable cause to believe the educator may have abused or otherwise committed an unlawful act with a student or minor, despite the educator’s resignation from District employment before completion of the investigation. Education Code 21.006(b-1)
All resignations shall be submitted in writing to the Superintendent or designee. The employee shall give reasonable notice and shall include in the letter a statement of the reasons for resigning. A prepaid certified or registered letter of resignation shall be considered submitted upon mailing.

The Superintendent or designee shall be authorized to accept the resignation of an at-will employee at any time.

The Superintendent or designee shall be authorized to receive a contract employee’s resignation effective at the end of the school year or submitted after the last day of the school year and before the penalty-free resignation date. The resignation is accepted upon receipt.

The Superintendent or designee shall be authorized to accept a contract employee’s resignation submitted or effective at any other time. The Superintendent or designee shall either accept the resignation or submit the matter to the Board in order to pursue sanctions allowed by law.

Once submitted and accepted, the resignation of a contract employee may not be withdrawn without consent of the Board.


The Commissioner has held that, when a position is eliminated due to a necessary reduction in force, the District must transfer the employee to a different position if the teacher meets the District's objective criteria for that position. Objective criteria may include credentials, education, experience, applying for the position, and interviewing for the position. The District need not offer a position to a teacher who refuses to apply and interview for an open position. *Amerson v. Houston Indep. Sch. Dist.*, Tex. Comm'r of Educ. Decision No. 022-R2-1202 (2003)

A probationary contract employee may be discharged at any time for good cause as determined by the Board. If the employee is protesting proposed action to terminate a probationary contract before the end of the contract period on the basis of a financial exigency declared under Education Code 44.011 [see CEA], the employee is entitled to a hearing in the manner provided under Education Code 21.207 for nonrenewal of a term contract [see DFBB] or a hearing under Education Code Chapter 21, Subchapter F (hearings before independent hearing examiner) [see DFD], as determined by the Board. *Education Code 21.104(a), .1041, .159*

The Board may terminate a probationary contract at the end of the contract period if in the Board’s judgment such termination will serve the best interests of the District. *Education Code 21.103(a)*

The Board may terminate a term contract and discharge a term contract employee at any time due to a financial exigency that requires a reduction in personnel. *Education Code 21.211(a)*

An employee who is protesting proposed action to terminate a term contract at any time on the basis of a financial exigency declared under Education Code 44.011 [see CEA] that requires a reduction in personnel must notify the Board in writing not later than the tenth day after the date the employee receives notice of the proposed action. The employee is entitled to a hearing in the manner provided under Education Code 21.207 for nonrenewal of a term contract [see DFBB] or a hearing under Education Code Chapter 21,
Subchapter F (hearings before independent hearing examiner) [see DFD], as determined by the Board. *Education Code 21.159*

**CONTINUING CONTRACT**

An employee employed under a continuing contract may be discharged at any time for good cause as determined by the Board. *Education Code 21.156*

Continuing contract employees may be released from employment by the District at the end of a school year because of a necessary reduction of personnel. A necessary reduction of personnel shall be made primarily based upon teacher appraisals administered under Education Code 21.352 in the specific teaching fields and other criteria as determined by the Board. *Education Code 21.157*

A hearing of a proposed action based on a declaration of financial exigency shall be conducted in the manner provided under Education Code 21.207 for nonrenewal of a term contract [see DFBB] or in the manner provided under Education Code Chapter 21, Subchapter F (hearings before independent hearing examiner) [see DFD], as determined by the Board. *Education Code 21.1041, .159*

**FINANCIAL EXIGENCY**

The Board may adopt a resolution declaring a financial exigency for the District. *Education Code 44.011 [See CEA]*

**HEARING EXAMINER**

The independent hearing examiner process does not apply to a decision to terminate a probationary or term contract before the end of the contract period or terminate a continuing contract at any time, based on a financial exigency declared under Education Code 44.011 [see CEA] that requires a reduction in personnel, unless the Board has decided to use this hearing process. *Education Code 21.251*

**WARN ACT**

Local governments are not covered by the federal Worker Adjustment and Retraining Notification Act (WARN Act) (plant closings and mass layoffs). *20 C.F.R. 639.3(a)(ii)*
If the Superintendent determines that there is a need to reduce personnel costs, the Superintendent shall develop, in consultation with the Board as necessary, a plan for reducing costs that may include one or more of the following:

- Salary reductions [see DEAB]
- Furloughs, if the District has received certification from the Commissioner of a reduction in funding under Education Code 42.009 [see CBA and DEAB]
- Reductions in force of contract personnel due to financial exigency, if the District meets the standard for declaring a financial exigency as defined by the Commissioner [see CEA and provisions at REDUCTION IN FORCE DUE TO FINANCIAL EXIGENCY, below]
- Reductions in force of contract personnel due to program change [see DFFB]
- Other means of reducing personnel costs

A plan to reduce personnel costs may include the reduction of personnel employed pursuant to employment arrangements not covered at APPLICABILITY, below.

- See DCD for the termination at any time of at-will employment.
- See DFAB for the termination of a probationary contract at the end of the contract period.
- See DFCA for the termination of a continuing contract.
- See DCE for the termination at the end of the contract period of a contract not governed by Chapter 21 of the Education Code.

The following provisions shall apply when a reduction in force due to financial exigency requires:

1. The nonrenewal or termination of a term contract;
2. The termination of a probationary contract during the contract period; or
3. The termination of a contract not governed by Chapter 21 of the Education Code during the contract period.

Definitions used in this policy are as follows:

1. “Nonrenewal” shall mean the termination of a term contract at the end of the contract period.
2. "Discharge" shall mean termination of a contract during the contract period.

GENERAL GROUNDS

A reduction in force may take place when the Superintendent recommends and the Board adopts a resolution declaring a financial exigency. [See CEA] A determination of financial exigency constitutes sufficient reason for nonrenewal or sufficient cause for discharge.

EMPLOYMENT AREAS

When a reduction in force is to be implemented, the Superintendent shall recommend the employment areas to be affected.

Employment areas may include, for example:

1. Elementary grades, levels, subjects, departments, or programs.
2. Secondary grades, levels, subjects, departments, or programs, including career and technical education subjects.
3. Special programs, such as gifted and talented, bilingual/ESL programs, special education and related services, compensatory education, or migrant education.
4. Disciplinary alternative education programs (DAEPs) and other discipline management programs.
5. Counseling programs.
7. Nursing and other health services programs.
8. An educational support program that does not provide direct instruction to students.
9. Other Districtwide programs.
10. An individual campus.
11. Any administrative position, unit, or department.
12. Programs funded by state or federal grants or other dedicated funding.
13. Other contractual positions.

The Superintendent’s recommendation may address whether any employment areas should be:

1. Combined or adjusted (e.g., “elementary programs” and “compensatory education programs” can be combined to identify an employment area of “elementary compensatory education programs”); and/or
2. Applied on a Districtwide or campuswide basis (e.g., “the counseling program at [named elementary campus]”).

The Board shall determine the employment areas to be affected.

TEACHERS WITH MULTIPLE TEACHING ASSIGNMENTS

Teachers engaged in teaching more than one subject area in their current assignment shall be considered in the following employment areas:

1. Teachers instructing in two or more subject matter areas with an equal number of classes in each subject area shall be subject to a reduction in force due to financial exigency in each subject area taught.

2. Teachers instructing in two or more subject matter areas with an unequal number of classes in each subject area shall be subject to a reduction in force due to financial exigency only in the dominant subject matter area.

The Superintendent or designee shall apply the following criteria to the employees within an affected employment area when a reduction in force will not result in the nonrenewal or discharge of all staff in the employment area. The criteria are listed in the order of importance and shall be applied sequentially to the extent necessary to identify the employees who least satisfy the criteria and therefore are subject to the reduction in force. For example, if all necessary reductions can be accomplished by applying the first criterion, it is not necessary to apply the second criterion, and so forth.

1. Qualifications for Current or Projected Assignment: Certification, multiple or composite certifications, bilingual certification, licensure, endorsement, highly qualified status, and/or specialized or advanced content-specific training or skills for the current or projected assignment.

2. Performance: Effectiveness, as reflected by:

   a. The most recent formal appraisal, whether completed by the District or by a previous district; and

   b. Any other written evaluative information, including disciplinary information, from the last 36 months.

If the Superintendent or designee at his or her discretion decides that the documented performance differences between two or more employees are too insubstantial to rely upon, he or she may proceed to apply the remaining criteria in the order listed below.
3. Extra Duties: Currently performing an extra-duty assignment, such as department or grade-level chair, band director, athletic coach, or activity sponsor.

4. Professional Background: Professional education and work experience related to the current or projected assignment.

5. Seniority: Length of service in the District, as measured from the employee’s most recent date of hire.

**SUPERINTENDENT RECOMMENDATION**

The Superintendent shall recommend to the Board the nonrenewal or discharge of the identified employees within the affected employment areas.

**BOARD VOTE**

After considering the Superintendent’s recommendations, the Board shall determine the employees to be proposed for nonrenewal or discharge, as appropriate.

If the Board votes to propose nonrenewal of one or more employees, the Board shall specify the manner of hearing in accordance with DFBB(LOCAL).

If the Board votes to propose discharge of one or more employees, the Board shall determine whether the hearing will be conducted by a TEA-appointed hearing examiner [see DFD] or will be a local hearing under Education Code 21.207 [see DFBB].

**NOTICE**

The Superintendent or designee shall provide each employee written notice of the proposed nonrenewal or discharge, as applicable. The notice shall include:

1. The proposed action, as applicable;
2. A statement of the reason for the proposed action; and
3. Notice that the employee is entitled to a hearing of the type determined by the Board.

**CONSIDERATION FOR AVAILABLE POSITIONS**

An employee who has received notice of proposed nonrenewal or discharge may apply for available positions for which he or she wishes to be considered. The employee is responsible for reviewing posted vacancies, submitting an application, and otherwise complying with District procedures.

If the employee meets the District’s objective criteria for the position and is the most qualified internal applicant, the District shall offer the employee the position until:

1. Final action by the Board to end the employee’s contract, if the employee does not request a hearing.
The evidentiary hearing by the independent hearing examiner, the Board, or other person designated in DFBB(LOCAL), if the employee requests a hearing.

<table>
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<tr>
<th>HEARING REQUEST</th>
<th>NONRENEWAL: TERM CONTRACT</th>
<th>DISCHARGE: CHAPTER 21 CONTRACT</th>
<th>DISCHARGE: NON-CHAPTER 21 CONTRACT</th>
<th>FINAL ACTION</th>
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APPLICABILITY

This policy shall apply when a reduction in force due to a program change requires the nonrenewal of a term contract. A program change may be due to, for example, a redirection of resources; efforts to improve efficiency; a change in enrollment; a lack of student response to particular course offerings; legislative revisions to programs; or a reorganization or consolidation of two or more individual schools, departments, or school districts.

DEFINITIONS

Definitions used in this policy are as follows:

1. “Program change” shall mean any elimination, curtailment, or reorganization of a program, department, school operation, or curriculum offering, including, for example, a change in curriculum objectives; a modification of the master schedule; the restructuring of an instructional delivery method; or a modification or reorganization of staffing patterns in a department, on a particular campus, or Districtwide.

2. “Nonrenewal” shall mean the termination of a term contract at the end of the contract period.

GENERAL GROUNDS

A reduction in force may take place when the Superintendent recommends and the Board approves a program change. A determination of a program change constitutes sufficient reason for nonrenewal.

EMPLOYMENT AREAS

When a reduction in force is to be implemented, the Superintendent shall recommend the employment areas to be affected.

Employment areas may include, for example:

1. Elementary grades, levels, subjects, departments, or programs.

2. Secondary grades, levels, subjects, departments, or programs, including career and technical education subjects.

3. Special programs, such as gifted and talented, bilingual/ESL programs, special education and related services, compensatory education, or migrant education.

4. Disciplinary alternative education programs (DAEPs) and other discipline management programs.

5. Counseling programs.


7. Nursing and other health services programs.

8. An educational support program that does not provide direct instruction to students.
9. Other Districtwide programs.

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The Superintendent’s recommendation may address whether any employment areas should be:

1. Combined or adjusted (e.g., “elementary programs” and “compensatory education programs” can be combined to identify an employment area of “elementary compensatory education programs”); and/or

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The Board shall determine the employment areas to be affected.

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1. Teachers instructing in two or more subject matter areas with an equal number of classes in each subject area shall be subject to a reduction in force due to program change in each subject area taught.

2. Teachers instructing in two or more subject matter areas with an unequal number of classes in each subject area shall be subject to a reduction in force due to program change only in the dominant subject matter area.

The Superintendent or designee shall apply the following criteria to the employees within an affected employment area when a program change will not result in the nonrenewal of all staff in the employment area. The criteria are listed in the order of importance and shall be applied sequentially to the extent necessary to identify the employees who least satisfy the criteria and therefore are subject to the reduction in force. For example, if all necessary reductions can be accomplished by applying the first criterion, it is not necessary to apply the second criterion, and so forth.

1. Qualifications for Current or Projected Assignment: Certification, multiple or composite certifications, bilingual certification, licensure, endorsement, highly qualified status, and/or specia-
lized or advanced content-specific training or skills for the current or projected assignment.

2. Performance: Effectiveness, as reflected by:
   a. The most recent formal appraisal, whether completed by the District or by a previous district; and
   b. Any other written evaluative information, including disciplinary information, from the last 36 months.

   If the Superintendent or designee at his or her discretion decides that the documented performance differences between two or more employees are too insubstantial to rely upon, he or she may proceed to apply the remaining criteria in the order listed below.

3. Extra Duties: Currently performing an extra-duty assignment, such as department or grade-level chair, band director, athletic coach, or activity sponsor.

4. Professional Background: Professional education and work experience related to the current or projected assignment.

5. Seniority: Length of service in the District, as measured from the employee's most recent date of hire.

The Superintendent shall recommend to the Board the nonrenewal of the identified employees within the affected employment areas.

After considering the Superintendent's recommendations, the Board shall determine the employees to be proposed for nonrenewal, as appropriate. If the Board votes to propose nonrenewal of one or more employees, the Board shall specify the manner of hearing in accordance with DFBB(LOCAL).

The Superintendent or designee shall provide each employee written notice of the proposed nonrenewal. The notice shall include a statement of the reason for the proposed action and notice that the employee is entitled to a hearing of the type determined by the Board.

An employee who has received notice of proposed nonrenewal may apply for available positions for which he or she wishes to be considered. The employee is responsible for reviewing posted vacancies, submitting an application, and otherwise complying with District procedures.

If the employee meets the District's objective criteria for the position and is the most qualified internal applicant, the District shall offer the employee the position until:
1. Final action by the Board to end the employee’s contract, if the employee does not request a hearing.

2. The evidentiary hearing by the independent hearing examiner, the Board, or other person designated in DFBB(LOCAL), if the employee requests a hearing.

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EMPLOYEE RIGHTS AND PRIVILEGES

EMPLOYEE FREE SPEECH

District employees do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.

However, neither an employee nor anyone else has an absolute constitutional right to use all parts of a school building or its immediate environs for unlimited expressive purposes. When a public employee makes statements pursuant to his or her official duties, the employee is not speaking as a citizen for First Amendment purposes, and the Constitution does not insulate the communications from employer discipline.


WHISTLEBLOWER PROTECTION

The Board or its agents shall not suspend or terminate the employment of, or take other adverse personnel action against, an employee who in good faith reports a violation of law by the District or another public employee to an appropriate law enforcement authority.

A “report” is made to an “appropriate law enforcement authority” if the authority is a part of a state or local governmental entity or the federal government that the employee in good faith believes is authorized to:

1. Regulate under or enforce the law alleged to be violated in the report; or
2. Investigate or prosecute a violation of criminal law.

Gov’t Code 554.002

A supervisor who suspends or terminates the employment of or takes an adverse personnel action against an employee for reporting a violation of law shall be subject to civil penalties. Gov’t Code 554.008

DEFINITIONS

“Employee” means an employee or appointed officer who is paid to perform services for the District. It does not include independent contractors. Gov’t Code 554.001(4)

“Law” means a state or federal statute, an ordinance of a local governmental entity, or a rule adopted under a statute or ordinance. Gov’t Code 554.001(1)

A “good faith” belief that a violation of the law occurred means that:

1. The employee believed that the conduct reported was a violation of law; and
2. The employee’s belief was reasonable in light of the employee’s training and experience.
**Wichita County v. Hart**, 917 S.W.2d 779 (Tex. 1996)

A “good faith” belief that a law enforcement authority is an appropriate one means:

1. The employee believed the governmental entity was authorized to:
   
   a. Regulate under or enforce the law alleged to be violated in the report, or
   
   b. Investigate or prosecute a violation of criminal law; and

2. The employee’s belief was reasonable in light of the employee’s training and experience.


An employee who alleges a violation of whistleblower protection may sue the District for injunctive relief, actual damages, court costs, and attorney’s fees, as well as other relief specified in Government Code 554.003. **Gov’t Code 554.003**

Before suing, an employee must initiate action under the District’s grievance policy or other applicable policies concerning suspension or termination of employment or adverse personnel action.

The employee must invoke the District’s grievance procedure not later than the 90th day after the date on which the alleged suspension, termination, or other adverse employment action occurred or was discovered by the employee through reasonable diligence.

If the Board does not render a final decision before the 61st day after grievance procedures are initiated, the employee may elect to:

1. Exhaust the District’s grievance procedures, in which case the employee must sue not later than the 30th day after the date those procedures are exhausted to obtain relief under Government Code Chapter 554; or

2. Terminate District grievance procedures and sue within the time lines established by Government Code 554.005 and 554.006.

**Gov’t Code 554.005, .006** [See DGBA regarding grievance procedures]

If the employee brings a lawsuit, the employee has the burden of proof unless the suspension, termination, or adverse personnel action occurred within 90 days after the employee reported a violation of law, in which case the suspension, termination, or adverse
personnel action is presumed, subject to rebuttal, to be because the employee made the report.

**AFFIRMATIVE DEFENSE**

It is an affirmative defense to a whistleblower suit that the District would have taken the action against the employee that forms the basis of the suit based solely on information, observation, or evidence that is not related to the fact that the employee made a report protected under the whistleblower law.

*Gov't Code 554.004*

**NOTICE OF RIGHTS**

The Board shall inform its employees of their rights regarding whistleblower protection by posting a sign in a prominent location in the workplace. The design and content of the sign shall be as prescribed by the attorney general. *Gov't Code 554.009*

**PROTECTION FOR REPORTING CHILD ABUSE**

The Board or its agents may not suspend or terminate the employment of, or otherwise discriminate against, a professional employee who in good faith:

1. Reports child abuse or neglect to:
   a. The person’s supervisor,
   b. An administrator of the facility where the person is employed,
   c. A state regulatory agency, or
   d. A law enforcement agency; or
2. Initiates or cooperates with an investigation or proceeding by a governmental entity relating to an allegation of child abuse or neglect.

A person whose employment is suspended or terminated or who is otherwise discriminated against in violation of the foregoing may sue for injunctive relief, damages, or both. A District employee who has a cause of action under WHISTLEBLOWER PROTECTION may not bring an action under PROTECTION FOR REPORTING CHILD ABUSE.

*Family Code 261.110*

**PROTECTION FROM DISCIPLINARY PROCEEDINGS**

For purposes of the following provisions, “disciplinary proceeding” means discharge or suspension of a professional employee, or termination or nonrenewal of a professional employee’s term contract. [See DGC regarding immunity] *Education Code 22.0512(b)*

**REPORTING CHILD ABUSE OR MALTREATMENT**

A District employee may not be subject to any disciplinary proceeding resulting from an action taken in compliance with Education
Code 38.0041 [prevention of child abuse and other maltreatment, see FFG]. *Education Code 38.0041*

**USE OF PHYSICAL FORCE**

A professional employee may not be subject to disciplinary proceedings for the employee's use of physical force against a student to the extent justified under Penal Code 9.62. This provision does not prohibit the District from enforcing a policy relating to corporal punishment or bringing a disciplinary proceeding against a professional employee of the District who violates the District policy relating to corporal punishment. *Education Code 22.0512(a); Tex. Att'y Gen. Op. GA-0202 (2004)*

Penal Code 9.62 provides that the use of force, other than deadly force, against a person is justified:

1. If the actor is entrusted with the care, supervision, or administration of the person for a special purpose; and
2. When and to the degree the actor reasonably believes the force is necessary to further the special purpose or to maintain discipline in a group.

**INSTRUCTIONAL MATERIALS AND TECHNOLOGICAL EQUIPMENT**

The Board may not require an employee who acts in good faith to pay for instructional materials or technological equipment that is damaged, stolen, misplaced, or not returned. An employee may not waive this provision by contract or any other means.

The District may enter into a written agreement with an employee whereby the employee assumes financial responsibility for electronic instructional material or technological equipment usage off school property or outside of a school-sponsored event in consideration for the ability of the employee to use the electronic instructional material or technological equipment for personal business.

The written agreement shall be separate from the employee's contract of employment, if applicable, and shall clearly inform the employee of the amount of the financial responsibility and advise the employee to consider obtaining appropriate insurance. An employee may not be required to enter into such an agreement as a condition of employment.

*Education Code 31.104(e)*

**CHARITABLE CONTRIBUTIONS**

A Board or District employee may not directly or indirectly require or coerce any District employee to:

1. Make a contribution to a charitable organization or in response to a fund-raiser; or
2. Attend a meeting called for the purpose of soliciting charitable contributions.
The Board or a District employee may not directly or indirectly require or coerce any District employee to refrain from the same acts.

*Education Code 22.011*

The District may not suspend, terminate, or otherwise discipline or discriminate against a nurse who refuses to engage in an act or omission relating to patient care that:

1. Would constitute grounds for reporting the nurse to the Board of Nurse Examiners under Occupations Code Chapter 301, Subchapter I;

2. Constitutes a minor incident, as defined at Occupations Code 301.419; or

3. Would violate Occupations Code Chapter 301 or a rule of the Board of Nurse Examiners, if the nurse notifies the District at the time of the refusal that this is the reason for refusing to engage in the act or omission.

*Occupations Code 301.352(a)*
The Board or any District employee may not directly or indirectly require or coerce any teacher to refrain from participating in political affairs in his or her community, state, or nation. *Education Code 21.407(b)*

The Board or any District employee may not directly or indirectly require or coerce any teacher to join any group, club, committee, organization, or association. *Education Code Chapter 21* does not abridge the right of an educator to join or refuse to join any professional association or organization. *Education Code 21.407(a), 21.408*

An individual may not be denied employment by the District because of the individual's membership or nonmembership in a labor organization. *Gov't Code 617.004*

"Labor organization" means any organization in which employees participate that exists, in whole or in part, to deal with one or more employers concerning grievances, labor disputes, wages, hours of employment, or working conditions. *Gov't Code 617.001*

The Board may not enter into a collective bargaining contract with a labor organization regarding wages, hours, or conditions of employment of District employees; nor shall it recognize a labor organization as the bargaining agent for a group of employees. *Gov't Code 617.002*

District employees may not strike or engage in an organized work stoppage against the District. However, the right of an individual to cease work shall not be abridged if the individual is not acting in concert with others in an organized work stoppage. *Gov't Code 617.003(a), (c)*

Any employee who participates in a strike or organized work stoppage shall forfeit all reemployment rights and any other rights, benefits, or privileges he or she enjoys as a result of public employment or former public employment. *Gov't Code 617.003(b)*
An employee’s participation in community, political, or employee organization activities shall be entirely voluntary and shall not:

1. Interfere with the employee’s performance of assigned duties and responsibilities.
2. Result in any political or social pressure being placed on students, parents, or staff.
3. Involve trading on the employee’s position or title with the District.

 Organizations representing professional, paraprofessional, or support employees may use District facilities with prior approval of the appropriate administrator. Other groups composed of District employees may use District facilities in accordance with policy GKD.

The following standards of conduct shall apply to all employees of the District:

1. No employee shall participate in partisan political activity during school hours except in the teachers' lounge or other employee break areas and during the time before first period or after last period.
2. No employee shall distribute partisan political materials to students whether the employee is a candidate or a political supporter.
3. No employee shall encourage students to distribute political literature, appear in films, or work on a particular campaign.
The District may distinguish among associations on the basis of proportionate membership if it ensures that any distinguishing policies and customs are reasonable and not coercive. *San Antonio Federation of Teachers v. San Antonio Indep. Sch. Dist., Comm. of Ed. Dec. 77-R105* (1980)
The District shall take no action abridging the freedom of speech or the right of the people to petition the Board for redress of grievances.  

*U.S. Const. Amend. I, XIV*

The Board may confine its meetings to specified subject matter and may hold nonpublic sessions to transact business. But when the Board sits in public meetings to conduct public business and hear the views of citizens, it may not discriminate between speakers on the basis of the content of their speech or the message it conveys.  


**TEXAS CONSTITUTION**

Employees shall have the right, in a peaceful manner, to assemble together for their common good and to apply to those invested with the powers of government for redress of grievances or other purposes, by petition, address, or remonstrance.  

*Tex. Const. Art. I, Sec. 27*

There is no requirement that the Board negotiate or even respond to complaints. However, the Board must stop, look, and listen and must consider the petition, address, or remonstrance.  

*Prof’l Ass’n of College Educators v. El Paso County Cnty. [College] District*, 678 S.W.2d 94 (Tex. App.—El Paso 1984, writ ref’d n.r.e.)

**FEDERAL LAWS**

**SECTION 504**

A district that receives federal financial assistance, directly or indirectly, and that employs 15 or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504 of the Rehabilitation Act of 1973.  

34 CFR 104.7(b), .11

**AMERICANS WITH DISABILITIES ACT**

A district that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by the Code of Federal Regulations, Title 28, Part 35 (Americans with Disabilities Act regulations).  

28 CFR 35.107, .140

**TITLE IX**

A district that receives federal financial assistance, directly or indirectly, shall adopt and publish grievance procedures providing for prompt and equitable resolution of employee complaints alleging any action prohibited by Title IX of the Education Amendments of 1972.  

34 CFR 106.8(b); *North Haven Bd. of Educ. v. Bell*, 456 U.S. 512 (1982)
The prohibition against collective bargaining and strikes [see DGA] does not impair the right of employees to present grievances concerning their wages, hours of employment, or conditions of work, either individually or through a representative that does not claim the right to strike.  *Gov't Code 617.005*

The term “conditions of work” should be construed broadly to include any area of wages, hours or conditions of employment, and any other matter that is appropriate for communications from employees to employer concerning an aspect of their relationship.  *Att'y Gen. Op. JM-177 (1984); Corpus Christi Fed. of Teachers v. Corpus Christi Indep. Sch. Dist., 572 S.W.2d 663 (Tex. 1978)*

The statute protects grievances presented individually or individual grievances presented collectively.  *Lubbock Prof'l Firefighters v. City of Lubbock, 742 S.W.2d 413 (Tex. App.—Amarillo 1987, writ ref'd n.r.e.)*;  *Sayre v. Mullins, 681 S.W.2d 25 (Tex. 1984)*

The District cannot deny an employee’s representative, including an attorney, the right to represent the employee at any stage of the grievance procedure, so long as the employee designates the representative and the representative does not claim the right to strike.  *Lubbock Prof'l Firefighters v. City of Lubbock, 742 S.W.2d 413 (Tex. App.—Amarillo 1987, writ ref'd n.r.e.)*;  *Sayre v. Mullins, 681 S.W.2d 25 (Tex. 1984)*

The District should meet with employees or their designated representatives at reasonable times and places to hear grievances concerning wages, hours of work, and conditions of work.  The right to present grievances is satisfied if employees have access to those in a position of authority to air their grievances.  However, that authority is under no legal compulsion to take action to rectify the matter.  *Att'y Gen. Op. H-422 (1974); Corpus Christi Indep. Sch. Dist. v. Padilla, 709 S.W.2d 700 (Tex. App.—Corpus Christi, 1986, no writ)*

The District’s employment policy must provide each employee with the right to present grievances to the Board.

The policy may not restrict the ability of an employee to communicate directly with a member of the Board regarding a matter relating to the operation of the District, except that the policy may prohibit ex parte communication relating to:

1.  A hearing under Education Code Chapter 21, Subchapter E (Term Contracts) or F (Hearing Examiners); and
2.  Another appeal or hearing in which ex parte communication would be inappropriate pending a final decision by the Board.

*Education Code 11.1513*
GRIEVANCE POLICY

The District’s grievance policy must permit an employee to report a grievance against a supervisor to a different supervisor if the employee alleges that the supervisor:

1. Violated the law in the workplace; or
2. Unlawfully harassed the employee.

AUDIO RECORDING

In addition, the policy must permit an employee who reports a grievance to make an audio recording of any meeting or proceeding at which the substance of a grievance that complies with the policy is investigated or discussed. The implementation of an employee’s authorization to make an audio recording may not result in a delay of any time line provided by the grievance policy. The District is not required to provide equipment for the employee to make the recording.

*Education Code 11.171*

FINALITY OF GRADES

An examination or course grade issued by a classroom teacher is final and may not be changed unless the grade is arbitrary, erroneous, or not consistent with the District’s grading policy applicable to the grade, as determined by the Board.

The Board’s determination is not subject to appeal.

*Education Code 28.0214*

OPEN MEETINGS ACT

The Board is not required to conduct an open meeting to hear a complaint or charge against an employee. However, the Board may not conduct a closed meeting if the employee who is the subject of the hearing requests a public hearing. *Gov’t Code 551.074* [See BEC]

CLOSED MEETING

The Board may conduct a closed meeting on an employee complaint to the extent required or provided by law. *Gov’t Code 551.082* [See BEC]

RECORD OF PROCEEDINGS

An appeal of the Board’s decision to the Commissioner of Education shall be decided based on a review of the record developed at the District level. “Record” includes, at a minimum, an audible electronic recording or written transcript of all oral testimony or argument. *Education Code 7.057(c), (f)*

It is the District’s responsibility to make and preserve the records of the proceedings before the Board. If the District fails to create and preserve the record without good cause, all substantial evidence issues that require missing portions of the record for resolution shall be deemed against the District. The record shall include:
1. A tape recording or a transcript of the hearing at the local level. If a tape recording is used:
   a. The tape recording must be complete, audible, and clear; and
   b. Each speaker must be clearly identified.
2. All evidence admitted;
3. All offers of proof;
4. All written pleadings, motions, and intermediate rulings;
5. A description of matters officially noticed;
6. If applicable, the decision of the hearing examiner;
7. A tape recording or transcript of the oral argument before the Board; and
8. The decision of the Board.

19 TAC 157.1073(d)

WHISTLEBLOWER COMPLAINTS

Before bringing suit, an employee who seeks relief under Government Code Chapter 554 (whistleblowers) must initiate action under the District’s grievance or appeal procedures relating to suspension or termination of employment or adverse personnel action. Gov’t Code 554.006 [See DG]
The Board encourages employees to discuss their concerns and complaints through informal conferences with their supervisor, principal, or other appropriate administrator.

Concerns should be expressed as soon as possible to allow early resolution at the lowest possible administrative level.

Employees shall not be prohibited from communicating with a member of the Board regarding District operations except when communication between an employee and a Board member would be inappropriate because of a pending hearing or appeal related to the employee.

If an informal conference regarding a complaint fails to reach the outcome requested by the employee, he or she may initiate the formal process described below by timely filing a written complaint form.

Even after initiating the formal complaint process, employees are encouraged to seek informal resolution of their concerns. An employee whose concerns are resolved may withdraw a formal complaint at any time.

The process described in this policy shall not be construed to create new or additional rights beyond those granted by law or Board policy, nor to require a full evidentiary hearing or “mini-trial” at any level.

The District shall inform employees of this policy.

Neither the Board nor any District employee shall unlawfully retaliate against an employee for bringing a concern or complaint.

Whistleblower complaints shall be filed within the time specified by law and may be made to the Superintendent or designee beginning at Level Two. Time lines for the employee and the District set out in this policy may be shortened to allow the Board to make a final decision within 60 calendar days of the initiation of the complaint.

In this policy, the terms “complaint” and “grievance” shall have the same meaning. This policy shall apply to all employee complaints, except as provided below.
This policy shall not apply to:

1. Complaints alleging discrimination, including violations of Title IX (gender), Title VII (sex, race, color, religion, national origin), ADEA (age), or Section 504 (disability). [See DIA]

2. Complaints alleging certain forms of harassment, including harassment by a supervisor and violations of Title VII. [See DIA]

3. Complaints concerning retaliation relating to discrimination and harassment. [See DIA]

4. Complaints concerning instructional materials. [See EFA]

5. Complaints concerning a commissioned peace officer who is an employee of the District. [See CKE]

6. Complaints arising from the proposed nonrenewal of a term contract issued under Chapter 21 of the Education Code. [See DFBB]

7. Complaints arising from the proposed termination or suspension without pay of an employee on a probationary, term, or continuing contract issued under Chapter 21 of the Education Code during the contract term. [See DFAA, DFBA, or DFCA, respectively]

Complaint forms and appeal notices may be filed by hand-delivery, fax, or U.S. Mail. Hand-delivered filings shall be timely filed if received by the appropriate administrator or designee by the close of business on the deadline. Fax filings shall be timely filed if they are received on or before the deadline, as indicated by the date/time shown on the fax copy. Mail filings shall be timely filed if they are postmarked by U.S. Mail on or before the deadline and received by the appropriate administrator or designated representative no more than three days after the deadline.

At Levels One and Two, “response” shall mean a written communication to the employee from the appropriate administrator. Responses may be hand-delivered or sent by U.S. Mail to the employee’s mailing address of record. Mailed responses shall be timely if they are postmarked by U.S. Mail on or before the deadline.

“Days” shall mean District business days, unless otherwise noted. In calculating time lines under this policy, the day a document is filed is “day zero.” The following business day is “day one.”
“Representative” shall mean any person who or an organization that does not claim the right to strike and is designated by the employee to represent him or her in the complaint process.

The employee may designate a representative through written notice to the District at any level of this process. If the employee designates a representative with fewer than three days’ notice to the District before a scheduled conference or hearing, the District may reschedule the conference or hearing to a later date, if desired, in order to include the District’s counsel. The District may be represented by counsel at any level of the process.

Complaints arising out of an event or a series of related events shall be addressed in one complaint. Employees shall not bring separate or serial complaints arising from any event or series of events that have been or could have been addressed in a previous complaint.

When two or more complaints are sufficiently similar in nature and remedy sought to permit their resolution through one proceeding, the District may consolidate the complaints.

All time limits shall be strictly followed unless modified by mutual written consent.

If a complaint form or appeal notice is not timely filed, the complaint may be dismissed, on written notice to the employee, at any point during the complaint process. The employee may appeal the dismissal by seeking review in writing within ten days from the date of the written dismissal notice, starting at the level at which the complaint was dismissed. Such appeal shall be limited to the issue of timeliness.

Each party shall pay its own costs incurred in the course of the complaint.

Complaints under this policy shall be submitted in writing on a form provided by the District.

Copies of any documents that support the complaint should be attached to the complaint form. If the employee does not have copies of these documents, they may be presented at the Level One conference. After the Level One conference, no new documents may be submitted by the employee unless the employee did not know the documents existed before the Level One conference.

A complaint form that is incomplete in any material aspect may be dismissed, but may be refiled with all the required information if the refiling is within the designated time for filing a complaint.
As provided by law, an employee shall be permitted to make an audio recording of a conference or hearing under this policy at which the substance of the employee's complaint is discussed. The employee shall notify all attendees present that an audio recording is taking place.

LEVEL ONE

Complaint forms must be filed:

1. Within 15 days of the date the employee first knew, or with reasonable diligence should have known, of the decision or action giving rise to the complaint or grievance; and

2. With the lowest level administrator who has the authority to remedy the alleged problem.

In most circumstances, employees on a school campus shall file Level One complaints with the campus principal; other District employees shall file Level One complaints with their immediate supervisor.

If the only administrator who has authority to remedy the alleged problem is the Superintendent or designee, the complaint may begin at Level Two following the procedure, including deadlines, for filing the complaint form at Level One.

If the complaint is not filed with the appropriate administrator, the receiving administrator must note the date and time the complaint form was received and immediately forward the complaint form to the appropriate administrator.

The appropriate administrator shall investigate as necessary and hold a conference with the employee within ten days after receipt of the written complaint. The administrator may set reasonable time limits for the conference.

The administrator shall provide the employee a written response within ten days following the conference. In reaching a decision, the administrator may consider information provided at the Level One conference and any other relevant documents or information the administrator believes will help resolve the complaint.

LEVEL TWO

If the employee did not receive the relief requested at Level One or if the time for a response has expired, the employee may request a conference with the Superintendent or designee to appeal the Level One decision.

The appeal notice must be filed in writing, on a form provided by the District, within ten days of the date of the written Level One response or, if no response was received, within ten days of the Level One response deadline.
After receiving notice of the appeal, the Level One administrator shall prepare and forward a record of the Level One complaint to the Level Two administrator. The employee may request a copy of the Level One record.

The Level One record shall include:

1. The original complaint form and any attachments.
2. All other documents submitted by the employee at Level One.
3. The written response issued at Level One and any attachments.
4. All other documents relied upon by the Level One administrator in reaching the Level One decision.

The Superintendent or designee shall hold a conference within ten days after the appeal notice is filed. The conference shall be limited to the issues presented by the employee at Level One and identified in the Level Two appeal notice. At the conference, the employee may provide information concerning any documents or information relied upon by the administration for the Level One decision. The Superintendent or designee may set reasonable time limits for the conference.

The Superintendent or designee shall provide the employee a written response within ten days following the conference. In reaching a decision, the Superintendent or designee may consider the Level One record, information provided at the Level Two conference, and any other relevant documents or information the Superintendent or designee believes will help resolve the complaint.

Recordings of the Level One and Level Two conferences, if any, shall be maintained with the Level One and Level Two records.

LEVEL THREE

If the employee did not receive the relief requested at Level Two or if the time for a response has expired, the employee may appeal the decision to the Board.

The appeal notice must be filed in writing, on a form provided by the District, within ten days of the date of the written Level Two response or, if no response was received, within ten days of the Level Two response deadline.

The Superintendent or designee shall inform the employee of the date, time, and place of the Board meeting at which the complaint will be on the agenda for presentation to the Board.
The Superintendent or designee shall provide the Board the record of the Level Two complaint. The employee may request a copy of the Level Two record.

The Level Two record shall include:

1. The Level One record.

2. The written response issued at Level Two and any attachments.

3. All other documents relied upon by the administration in reaching the Level Two decision.

If at the Level Three hearing the administration intends to rely on evidence not included in the Level Two record, the administration shall provide the employee notice of the nature of the evidence at least three days before the hearing.

The District shall determine whether the complaint will be presented in open or closed meeting in accordance with the Texas Open Meetings Act and other applicable law. [See BE]

The presiding officer may set reasonable time limits and guidelines for the presentation including an opportunity for the employee and administration to each make a presentation and provide rebuttal and an opportunity for questioning by the Board. The Board shall hear the complaint and may request that the administration provide an explanation for the decisions at the preceding levels.

In addition to any other record of the Board meeting required by law, the Board shall prepare a separate record of the Level Three presentation. The Level Three presentation, including the presentation by the employee or the employee's representative, any presentation from the administration, and questions from the Board with responses, shall be recorded by audio recording, video/audio recording, or court reporter.

The Board shall then consider the complaint. It may give notice of its decision orally or in writing at any time up to and including the next regularly scheduled Board meeting. If the Board does not make a decision regarding the complaint by the end of the next regularly scheduled meeting, the lack of a response by the Board upholds the administrative decision at Level Two.
IMMUNITY FROM INDIVIDUAL LIABILITY

The statutory immunity detailed below is in addition to and does not preempt the common law doctrine of official and governmental immunity. *Education Code 22.051(b)*

‘PROFESSIONAL EMPLOYEES’

A professional employee of the District is not personally liable for any act that is incident to or within the scope of the duties of the employee’s position of employment and that involves the exercise of judgment or discretion, except in circumstances where, in disciplining a student, the employee uses excessive force or his or her negligence results in bodily injury to the student.

“Professional employee of a school district” includes the Superintendent; a principal; teacher, including a substitute teacher or a teacher employed by a company that contracts with the District to provide the teacher’s services to the District; a supervisor; social worker; counselor; nurse; teacher’s aide; a student in an education preparation program participating in a field experience or internship; a DPS-certified school bus driver, and any other person whose employment requires certification and the exercise of discretion.

MOTOR VEHICLE EXCEPTION

Education Code 22.0511 does not apply to the operation, use, or maintenance of any motor vehicle.

*Education Code 22.0511(a)–(b), .051; Hopkins v. Spring Indep. Sch. Dist., 736 S.W.2d 617 (Tex. 1987); Barr v. Bernhard, 562 S.W.2d 844 (Tex. 1978)*

‘INDIVIDUALS’

In addition to the immunity described above [at PROFESSIONAL EMPLOYEES], and under other provisions of state law, an individual is entitled to any immunity and any other protections afforded under the Paul D. Coverdell Teacher Protection Act of 2001 (Coverdell Act). [See TEACHERS, below] Nothing in Education Code 22.0511(c) shall be construed to limit or abridge any immunity or protection afforded an individual under state law. *Education Code 22.0511(c)*

NO WAIVER

The District may not, by policy, contract, or administrative directive:

1. Require an employee to waive the employee’s immunity from liability under Education Code 22.0511; or

2. Require an employee who acts in good faith to pay for or replace property belonging to a student or other person that the employee possessed because of an act incident to or within the scope of employment. [See DG at INSTRUCTIONAL MATERIAL AND TECHNOLOGICAL EQUIPMENT]

*Education Code 22.0511(d)*
Except as provided in 20 U.S.C. Section 6736(b), no “teacher” in a school shall be liable for harm caused by an act or omission of the teacher on behalf of the school if:

1. The teacher was acting within the scope of the teacher’s employment or responsibilities to a school or governmental entity;

2. The actions of the teacher were carried out in conformity with federal, state, and local laws (including rules and regulations) in furtherance of efforts to control, discipline, expel, or suspend a student or maintain order or control in the classroom or school;

3. If appropriate or required, the teacher was properly licensed, certified, or authorized by the appropriate authorities for the activities or practice involved in the state in which the harm occurred, where the activities were or practice was undertaken within the scope of the teacher’s responsibilities;

4. The harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the teacher; and

5. The harm was not caused by the teacher’s operating a motor vehicle, vessel, aircraft, or other vehicle for which the state requires the operator or the owner of the vehicle, craft, or vessel to:
   a. Possess an operator’s license; or
   b. Maintain insurance.

“Teacher” means:

1. A teacher, instructor, principal, or administrator;

2. Another educational professional who works in a school;

3. An individual member of the Board (as distinct from the Board); or

4. A professional or nonprofessional employee who works in a school, and:
   a. In the employee’s job, maintains discipline or ensures safety; or
   b. In an emergency, is called on to maintain discipline or ensure safety.

20 U.S.C. Sections 6733, 6736(a)
A teacher, administrator, or other District employee is not liable in civil damages for reporting to a school administrator or governmental authority, in the exercise of professional judgment within the scope of the teacher’s, administrator’s, or employee’s duties, a student whom the teacher suspects of using, passing, or selling, on school property any of the following substances:

1. Marijuana or a controlled substance, as defined by the Texas Controlled Substances Act.
2. A dangerous drug, as defined by the Texas Dangerous Drug Act.
3. An abusable glue or aerosol paint, as defined by Health and Safety Code Chapter 485, or a volatile chemical, if the substance is used or sold for the purpose of inhaling its fumes or vapors.
4. An alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code.

Education Code 37.016

A principal or person designated by the principal is not liable in civil damages for making a good faith report to law enforcement, as required by law, of an activity specified at Education Code 37.015.

Education Code 37.015 [See GRAA]

The requirements of Education Code 38.0041 [regarding prevention of abuse and other maltreatment of children, see FFG] are considered to involve an employee’s judgment and discretion and are not considered ministerial acts for purposes of immunity from liability under Education Code 22.0511 [see IMMUNITY FROM INDIVIDUAL LIABILITY, above]. Education Code 38.0041 [See DG regarding protection from disciplinary proceedings]

A member of an attendance committee is not personally liable for any act or omission arising out of duties as a member of an attendance committee. Education Code 25.092(c)

The District, the Board, and its employees shall be immune from civil liability for damages or injuries resulting from the administration of medication to a student in accordance with Education Code 22.052. Education Code 22.052(a), (b) [See FFAC]

An officer or employee of the District is not civilly liable for an act performed in the discharge of duty if the person is performing an activity related to sheltering or housing individuals in connection with the evacuation of an area stricken or threatened by disaster. Gov’t Code 418.006, 431.085
Educators shall comply with standard practices and ethical conduct toward students, professional colleagues, school officials, parents, and members of the community and shall safeguard academic freedom.

The State Board for Educator Certification (SBEC) shall provide for the adoption, amendment, and enforcement of an educator’s code of ethics [see DH(EXHIBIT)]. SBEC is solely responsible for enforcing the ethics code for purposes related to certification disciplinary proceedings.

*Education Code 21.041(8); 19 TAC 247.1, 247.2*

The Superintendent must file a written report with SBEC not later than the seventh day after the Superintendent first obtains or has knowledge of information indicating that:

1. An applicant for or holder of a certificate issued by SBEC has a reported criminal history;
2. The certificate holder engaged in conduct that violated the assessment instrument security procedures established under Education Code 39.0301;
3. The certificate holder resigned and reasonable evidence supports a recommendation by the Superintendent to terminate the educator based on a determination that the educator engaged in misconduct listed at DF(LEGAL) [see DFE]; or
4. A certificate holder’s employment at the District was terminated based on a determination that the certificate holder engaged in the misconduct listed at DF(LEGAL).

*Education Code 21.006; 19 TAC 249.14*

The report shall, at a minimum, describe in detail the factual circumstances requiring the report and identify the subject of the report by providing the following available information:

1. Name and any aliases;
2. Certificate number, if any, or social security number;
3. Last known mailing address and home and daytime phone numbers;
4. Name or names and any available contact information of any alleged victim or victims; and
5. Name or names and any available contact information of any relevant witnesses to the circumstances requiring the report.
The Superintendent shall include the name of a student or minor who is the victim of abuse or unlawful conduct by an educator, but the name of the student or minor is not public information under Government Code Chapter 552. [See GBAA]

A superintendent who fails to timely make a required report is subject to sanctions by SBEC.

**IMMUNITY**

A superintendent who, in good faith and while acting in an official capacity, files a report with SBEC is immune from civil or criminal liability that might otherwise be incurred or imposed.

*Education Code 21.006; 19 TAC 249.14*

**PUBLIC SERVANTS**

All District employees are “public servants” and therefore subject to Title VIII of the Penal Code, regarding offenses against public administration, including restrictions on the acceptance of illegal gifts, honoraria and expenses, and abuse of office. *Penal Code 1.07(a)(41), Title VIII* [See DBD and BBFA]

**TOBACCO USE PROHIBITED**

The Board shall prohibit smoking or using tobacco products at a school-related or school-sanctioned activity on or off school property.

**ENFORCEMENT**

The Board shall ensure that District personnel enforce the policies on school property.

*Education Code 38.006(1)(3) [See also FNCD and GKA]*

**DRUG AND ALCOHOL ABUSE PROGRAM**

The Board shall prohibit the use of alcoholic beverages at school-related or school-sanctioned activities on or off school property. *Education Code 38.007(a)*

**FEDERAL DRUG-FREE WORKPLACE ACT**

A district that receives a direct federal grant must agree to provide a drug-free workplace by:

1. Publishing a statement notifying employees of the requirements of the federal Drug-Free Workplace Act (DFWA) and requiring that each employee be given a copy of the statement [see DI(EXHIBIT)];

2. Establishing a drug-free awareness program for employees pursuant to the DFWA;

3. Notifying the granting agency within ten days after receiving notice that an employee has been convicted under a criminal drug statute;

4. Imposing a sanction on an employee who is convicted of such a violation, or requiring the employee’s satisfactory participation in a drug abuse or rehabilitation program; and
5. Making a good faith effort to continue to maintain a drug-free workplace.

41 U.S.C. 702(a)(1)

DIETARY SUPPLEMENTS

Except as provided at Education Code 38.011(b), a District employee may not:

1. Knowingly sell, market, or distribute a dietary supplement that contains performance-enhancing compounds to a primary or secondary education student with whom the employee has contact as part of the employee’s duties; or

2. Knowingly endorse or suggest the ingestion, intranasal application, or inhalation of a dietary supplement that contains performance-enhancing compounds by a primary or secondary student with whom the employee has contact as part of the employee’s duties.

An employee who violates items 1 or 2, above, commits a Class C misdemeanor offense.

Education Code 38.011
EMPLOYEE STANDARDS OF CONDUCT

All District employees shall perform their duties in accordance with state and federal law, District policy, and ethical standards. [See DH(EXHIBIT)]

All District employees shall recognize and respect the rights of students, parents, other employees, and members of the community and shall work cooperatively with others to serve the best interests of the District.

Employees wishing to express concern, complaints, or criticism shall do so through appropriate channels. [See DGBA]

Employees shall comply with the standards of conduct set out in this policy and with any other policies, regulations, and guidelines that impose duties, requirements, or standards attendant to their status as District employees. Violation of any policies, regulations, or guidelines may result in disciplinary action, including termination of employment. [See DCD and DF series]

All District employees, in order to serve as appropriate role models for students, shall meet and, to the extent possible, shall exceed the standards of conduct required of students.

The use of foul or profane language by District employees shall be strictly prohibited.

Electronic media includes all forms of social media, such as text messaging, instant messaging, electronic mail (e-mail), web logs (blogs), electronic forums (chat rooms), video-sharing Web sites, editorial comments posted on the Internet, and social network sites. Electronic media also includes all forms of telecommunication, such as landlines, cell phones, and Web-based applications.

In accordance with administrative regulations, a certified or licensed employee, or any other employee designated in writing by the Superintendent or a campus principal, may use electronic media to communicate with currently enrolled students about matters within the scope of the employee’s professional responsibilities. All other employees are prohibited from using electronic media to communicate directly with students who are currently enrolled in the District. The regulations shall address:

1. Exceptions for family and social relationships;
2. The circumstances under which employees may use text messaging to communicate with students; and
3. Other matters deemed appropriate by the Superintendent or designee.
An employee shall comply with the District’s requirements for records retention and destruction to the extent those requirements apply to electronic media. [See CPC]

PERSONAL USE

Employees shall be held to the same professional standards in their public use of electronic media as they are for any other public conduct. If an employee’s use of electronic media violates state or federal law or District policy, or interferes with the employee’s ability to effectively perform his or her job duties, the employee is subject to disciplinary action, up to and including termination of employment.

SAFETY REQUIREMENTS

All employees shall adhere to District safety rules and regulations and shall report unsafe conditions or practices to the appropriate supervisor.

HARASSMENT OR ABUSE

Employees shall not engage in prohibited harassment, including sexual harassment, of:

1. Other employees. [See DIA]
2. Students. [See FFH; see FFG regarding child abuse and neglect]

While acting in the course of their employment, employees shall not engage in prohibited harassment, including sexual harassment, of other persons, including Board members, vendors, contractors, volunteers, or parents.

RELATIONSHIPS WITH STUDENTS

Employees shall not form romantic or other inappropriate social relationships with students. Any sexual relationship between a student and a District employee is always prohibited, even if consensual. [See FFH]

TOBACCO USE

Employees shall not use tobacco products on District premises, in District vehicles, or at school or school-related activities. [See also GKA]

ALCOHOL AND DRUGS

Employees shall not manufacture, distribute, dispense, possess, use, or be under the influence of any of the following substances during working hours while at school or at school-related activities during or outside of usual working hours:

1. Any controlled substance or dangerous drug as defined by law, including but not limited to marijuana, any narcotic drug, hallucinogen, stimulant, depressant, amphetamine, or barbiturate.
2. Alcohol or any alcoholic beverage.
3. Any abusable glue, aerosol paint, or any other chemical substance for inhalation.

4. Any other intoxicant, or mood-changing, mind-altering, or behavior-altering drugs.

An employee need not be legally intoxicated to be considered “under the influence” of a controlled substance.

EXCEPTIONS

An employee who manufactures, possesses, or dispenses a substance listed above as part of the employee’s job responsibilities, or who uses a drug authorized by a licensed physician prescribed for the employee’s personal use shall not be considered to have violated this policy.

NOTICE

Each employee shall be given a copy of the District’s notice regarding drug-free schools. [See DI(EXHIBIT)]

A copy of this policy, a purpose of which is to eliminate drug abuse from the workplace, shall be provided to each employee at the beginning of each year or upon employment.

ARRESTS, INDICTMENTS, CONVICTIONS, AND OTHER ADJUDICATIONS

An employee shall notify his or her principal or immediate supervisor within three calendar days of any charge, arrest, indictment, conviction, no contest or guilty plea, or other adjudication of the employee for any felony, any offense involving moral turpitude, and any of the other offenses as indicated below:

1. Crimes involving school property or funds;

2. Crimes involving attempt by fraudulent or unauthorized means to obtain or alter any certificate or permit that would entitle any person to hold or obtain a position as an educator;

3. Crimes that occur wholly or in part on school property or at a school-sponsored activity; or

4. Crimes involving moral turpitude, which include:
   - Dishonesty, fraud, deceit, theft, misrepresentation;
   - Deliberate violence;
   - Base, vile, or depraved acts that are intended to arouse or gratify the sexual desire of the actor;
   - Felony possession, transfer, sale, distribution, or conspiracy to possess, transfer, sell, or distribute any controlled substance defined in Chapter 481 of the Health and Safety Code;
Acts constituting public intoxication, operating a motor vehicle while under the influence of alcohol, or disorderly conduct, if any two or more acts are committed within any 12-month period; or

Acts constituting abuse under the Texas Family Code.

The dress and grooming of District employees shall be clean, neat, in a manner appropriate for their assignments, and in accordance with any additional standards established by their supervisors and approved by the Superintendent.
CODE OF ETHICS AND STANDARD PRACTICES FOR TEXAS EDUCATORS

The Texas educator shall comply with standard practices and ethical conduct toward students, professional colleagues, school officials, parents, and members of the community and shall safeguard academic freedom. The Texas educator, in maintaining the dignity of the profession, shall respect and obey the law, demonstrate personal integrity, and exemplify honesty. The Texas educator, in exemplifying ethical relations with colleagues, shall extend just and equitable treatment to all members of the profession. The Texas educator, in accepting a position of public trust, shall measure success by the progress of each student toward realization of his or her potential as an effective citizen. The Texas educator, in fulfilling responsibilities in the community, shall cooperate with parents and others to improve the public schools of the community. 19 TAC 247.1

1. Professional Ethical Conduct, Practices, and Performance

   Standard 1.1. The educator shall not intentionally, knowingly, or recklessly engage in deceptive practices regarding official policies of the District, educational institution, educator preparation program, the Texas Education Agency, or the State Board for Educator Certification (SBEC) and its certification process.

   Standard 1.2. The educator shall not knowingly misappropriate, divert, or use monies, personnel, property, or equipment committed to his or her charge for personal gain or advantage.

   Standard 1.3. The educator shall not submit fraudulent requests for reimbursement, expenses, or pay.

   Standard 1.4. The educator shall not use institutional or professional privileges for personal or partisan advantage.

   Standard 1.5. The educator shall neither accept nor offer gratuities, gifts, or favors that impair professional judgment or to obtain special advantage. This standard shall not restrict the acceptance of gifts or tokens offered and accepted openly from students, parents of students, or other persons or organizations in recognition or appreciation of service.

   Standard 1.6. The educator shall not falsify records, or direct or coerce others to do so.

   Standard 1.7. The educator shall comply with state regulations, written local Board policies, and other state and federal laws.

   Standard 1.8. The educator shall apply for, accept, offer, or assign a position or a responsibility on the basis of professional qualifications.

   Standard 1.9. The educator shall not make threats of violence against District employees, Board members, students, or parents of students.

   Standard 1.10. The educator shall be of good moral character and be worthy to instruct or supervise the youth of this state.
Standard 1.11. The educator shall not intentionally or knowingly misrepresent his or her employment history, criminal history, and/or disciplinary record when applying for subsequent employment.

Standard 1.12. The educator shall refrain from the illegal use or distribution of controlled substances and/or abuse of prescription drugs and toxic inhalants.

Standard 1.13. The educator shall not consume alcoholic beverages on school property or during school activities when students are present.

2. Ethical Conduct Toward Professional Colleagues

Standard 2.1. The educator shall not reveal confidential health or personnel information concerning colleagues unless disclosure serves lawful professional purposes or is required by law.

Standard 2.2. The educator shall not harm others by knowingly making false statements about a colleague or the school system.

Standard 2.3. The educator shall adhere to written local Board policies and state and federal laws regarding the hiring, evaluation, and dismissal of personnel.

Standard 2.4. The educator shall not interfere with a colleague’s exercise of political, professional, or citizenship rights and responsibilities.

Standard 2.5. The educator shall not discriminate against or coerce a colleague on the basis of race, color, religion, national origin, age, gender, disability, family status, or sexual orientation.

Standard 2.6. The educator shall not use coercive means or promise of special treatment in order to influence professional decisions or colleagues.

Standard 2.7. The educator shall not retaliate against any individual who has filed a complaint with the SBEC or who provides information for a disciplinary investigation or proceeding under this chapter.

3. Ethical Conduct Toward Students

Standard 3.1. The educator shall not reveal confidential information concerning students unless disclosure serves lawful professional purposes or is required by law.

Standard 3.2. The educator shall not intentionally, knowingly, or recklessly treat a student or minor in a manner that adversely affects or endangers the learning, physical health, mental health, or safety of the student or minor.

Standard 3.3. The educator shall not intentionally, knowingly, or recklessly misrepresent facts regarding a student.

Standard 3.4. The educator shall not exclude a student from participation in a program, deny benefits to a student, or grant an advantage to a student on the basis of race, color, gender, disability, national origin, religion, family status, or sexual orientation.
Standard 3.5. The educator shall not intentionally, knowingly, or recklessly engage in 
physical mistreatment, neglect, or abuse of a student or minor.

Standard 3.6. The educator shall not solicit or engage in sexual conduct or a romantic 
relationship with a student.

Standard 3.7. The educator shall not furnish alcohol or illegal/unauthorized drugs to any 
person under 21 years of age unless the educator is a parent or guardian of that child or 
knowingly allow any person under 21 years of age unless the educator is a parent or 
guardian of that child to consume alcohol or illegal/unauthorized drugs in the presence 
of the educator.

Standard 3.8. The educator shall maintain appropriate professional educator-student 
relationships and boundaries based on a reasonably prudent educator standard.

Standard 3.9. The educator shall refrain from inappropriate communication with a stu-
dent or minor, including electronic communication such as cell phone, text messaging, 
e-mail, instant messaging, blogging, or other social network communication. Factors 
that may be considered in assessing whether the communication is inappropriate in-
clude:

a. The nature, purpose, timing, and amount of the communication;

b. The subject matter of the communication;

c. Whether the communication was made openly or the educator attempted to con-
ceal the communication;

d. Whether the communication could be reasonably interpreted as soliciting sexual 
contact or a romantic relationship;

e. Whether the communication was sexually explicit; and

f. Whether the communication involved discussion(s) of the physical or sexual attract-
tiveness or the sexual history, activities, preferences, or fantasies of either the 
educator or the student.

19 TAC 247.2
Citizens, including District employees, have a right to be free from unreasonable searches and seizures. *U.S. Const. Amendment IV; Tex. Const. Art. I, Sec. 9*

The District may search an employee or an employee’s property if:

1. There are reasonable grounds to believe that the search will turn up evidence that the employee is guilty of work-related misconduct; and

2. The search is reasonably related in scope to the circumstances that justified the interference in the first place.


In addition, the District may search an employee’s workplace for noninvestigatory, work-related purposes, if there are reasonable grounds to believe that the search will turn up evidence that the employee is guilty of work-related misconduct. *O’Connor v. Ortega*, 480 U.S. 709 (1987)


The District may conduct drug tests, without a warrant and without individualized suspicion, when the test serves special governmental needs that outweigh the individual’s privacy expectation. *Skinner v. Railway Labor Executives Ass’n*, 489 U.S. 602 (1989); *Nat’l Treasury Employees Union v. Von Raab*, 489 U.S. 656 (1989)

Random alcohol and drug testing of employees in “safety-sensitive” positions may be permissible when the intrusiveness of the search is minimal and the Board is able to demonstrate that the drug-testing program furthers its interest in ensuring the physical safety of students. “Safety-sensitive” positions include those that involve the handling of potentially dangerous equipment or hazardous substances in an environment including a large number of children. *Aubrey v. Sch. Bd. of LaFayette Parish*, 148 F.3d 559 (5th Cir. 1998)

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**Note:** The following testing requirements apply to every employee of the District who operates a commercial motor vehicle and is subject to commercial driver’s license requirements in accordance with federal regulations.
The District shall conduct testing, in accordance with federal regulations, of commercial motor vehicle operators for use of alcohol or a controlled substance that violates law or federal regulation. 49 U.S.C. 31.306; 49 CFR Part 382

COMMERCIAL MOTOR VEHICLE DEFINED

A commercial motor vehicle is defined as a motor vehicle used to transport passengers or property that:

1. Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or

2. Has a gross vehicle weight rating of 26,001 or more pounds; or

3. Is designed to transport 16 or more passengers, including the driver.

49 CFR 382.107

TESTING PROCEDURES

The District shall ensure that all alcohol or controlled substances testing conducted under 49 CFR Part 382 complies with the procedures set forth in 49 CFR Part 40. 49 CFR 382.105

TESTS REQUIRED

Required testing includes pre-employment, postaccident, random, reasonable suspicion, return-to-duty, and follow-up testing. No driver shall refuse to submit to a postaccident alcohol or controlled substances test, a random alcohol or controlled substances test, a reasonable suspicion alcohol or controlled substances test, or a return-to-duty or follow-up alcohol or controlled substances test. The District shall not permit a driver who refuses to submit to such tests to perform or continue to perform safety-sensitive functions. 49 CFR 382.211, .309

EDUCATIONAL MATERIALS

The District shall provide educational materials that explain the federal requirements and the District's policies and procedures with respect to meeting these requirements and shall ensure that a copy of these materials is distributed to each driver before the start of alcohol and controlled substances testing under this policy and to each driver subsequently hired or transferred into a position that requires driving a commercial motor vehicle. Written notice to representatives of employee organizations of the availability of this information shall also be provided. The materials shall include detailed discussion of at least the items listed at 49 CFR 382.601. 49 CFR 382.601

REPORTS

A district required by federal safety regulations to conduct alcohol and drug testing of an employee who holds a commercial driver's license shall report the following information to the Department of Public Safety:
1. A valid positive result on an alcohol or drug test and whether
the specimen producing the result was a dilute specimen.

“Valid positive result” means an alcohol concentration of 0.04
or greater on an alcohol confirmation test, or a result at or
above the cutoff concentration levels listed in 49 CFR 40.87
on a confirmation drug test.

“Dilute specimen” means a specimen with creatinine and spe-
cific gravity values that are lower than expected for human
urine.

2. A refusal to provide a specimen for an alcohol or drug test.

3. An adulterated specimen or substituted specimen, as defined
at 49 CFR 40.3, on an alcohol or drug test.

For purposes of this requirement, the term “employee” includes
applicants for employment subject to preemployment testing.

Trans. Code 644.251–.252; 49 CFR 40.3
The District reserves the right to conduct searches when the District has reasonable cause to believe that a search will uncover evidence of work-related misconduct. The District may search the employee, the employee's personal items, work areas, lockers, and private vehicles parked on District premises or worksites or used in District business.

**Note:** The following provisions apply to employees who are covered by the federal Department of Transportation (DOT) rules.

The District shall establish an alcohol and controlled substances testing program to help prevent accidents and injuries resulting from the misuse of alcohol and controlled substances by the drivers of commercial motor vehicles, including school buses. The primary purpose of the testing program is to prevent impaired employees from performing safety-sensitive functions.

The following constitute drug-related violations:

1. Refusing to submit to a required test for alcohol or controlled substances.
2. Providing an adulterated, diluted, or a substituted specimen on an alcohol or drug test.
3. Testing positive for alcohol, at a concentration of 0.04 or above, in a postaccident test.
4. Testing positive for controlled substances in a postaccident test.
5. Testing positive for alcohol, at a concentration of 0.04 or above, in a random test.
6. Testing positive for controlled substances in a random test.
7. Testing positive for alcohol, at a concentration of 0.04 or above, in a reasonable suspicion test.
8. Testing positive for controlled substances in a reasonable suspicion test.

The Superintendent shall designate a District official who shall be responsible for ensuring that information is disseminated to employees regarding prohibited driver conduct, alcohol and controlled substances tests, and the consequences that follow positive test results.

With specific Board approval, the Superintendent may contract on behalf of the District with outside consultants and contractors and
work with a consortium of other local governments to secure the testing services, educational materials, and other component elements needed for this program.

Under such contract, the consortium shall be responsible for implementing, directing, administering, and managing the alcohol and controlled substances program within the U.S. Department of Transportation guidelines. The consortium shall serve as the principal contact with the laboratory and for collection activities in assuring the effective operation of the testing portion of the program.

**Reasonable Suspicion Testing**

Only supervisors specifically trained in accordance with federal regulations may, based upon reasonable suspicion, remove a driver from a safety-sensitive position and require testing for alcohol and/or controlled substances. The determination of reasonable suspicion shall be based on specific observations of the appearance, behavior, speech, or body odors of the driver whose motor ability, emotional equilibrium, or mental acuity seems to be impaired. Such observations must take place just preceding, during, or just after the period of the workday that the driver is on duty.

The observations may include indication of the chronic and withdrawal effects of controlled substances. Within 24 hours of the observed behavior, the supervisor shall provide a signed, written record documenting the observations leading to a controlled substance reasonable suspicion test.

**Consequences of Positive Test Results**

In addition to the consequences established by federal law, a District employee confirmed to have violated the District’s policy pertaining to alcohol or controlled substances shall be subject to District-imposed discipline, as determined by his or her supervisor(s) and the Superintendent. Such discipline may include any appropriate action from suspension without pay during the period of removal from safety-sensitive functions, up to and including termination of employment. [See DF series]

In cases where a driver is also employed in a nondriving capacity by the District, disciplinary action imposed for violation of alcohol and controlled substances policies shall apply to the employee’s functions and duties that involve driving. Additionally, upon recommendation of the employee’s supervisor, disciplinary measures up to and including termination of employment with the District may be considered.

**Alcohol Results Between 0.02 and 0.04**

A driver tested under this policy and found to have an alcohol concentration of 0.02 or greater, but less than 0.04, shall be suspended without pay from driving duties for 24 hours. A subsequent violation may subject the driver to termination in accordance with Board policy.
POSTACCIDENT TESTING

This table depicts the circumstances under which an employer is required to perform a postaccident alcohol or controlled substances test, in accordance with 49 CFR 382.303(a).

<table>
<thead>
<tr>
<th>Types of accidents involved</th>
<th>Citation issued to the CMV driver</th>
<th>Test must be performed by the employer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Human fatality</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td></td>
<td>NO</td>
<td>YES</td>
</tr>
<tr>
<td>Bodily injury with immediate medical treatment away from the scene</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td></td>
<td>NO</td>
<td>NO</td>
</tr>
<tr>
<td>Disabling damage to any motor vehicle requiring tow away</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td></td>
<td>NO</td>
<td>NO</td>
</tr>
</tbody>
</table>
HAZARD COMMUNICATION ACT

The District shall perform the following duties in compliance with the Hazard Communication Act:

**NOTICE**

1. Post and maintain the notice promulgated by the Texas Department of State Health Services (TDSHS) in the workplace. 

   *Health and Safety Code 502.017(a)*

**EDUCATION AND TRAINING**

2. Provide an education and training program for employees using or handling hazardous chemicals. “Employee” means any person who may be or may have been exposed to hazardous chemicals in the person’s workplace under normal operating conditions or foreseeable emergencies. Workers such as office workers or accountants who encounter hazardous chemicals only in nonroutine, isolated instances are not employees for purposes of these requirements. 

   *Health and Safety Code 502.003(10), .009*

3. Maintain the written hazard communication program and a record of each training session to employees, including the date, a roster of the employees who attend, the subjects covered in the training session, and the names of the instructors. Records shall be maintained for at least five years. 

   *Health and Safety Code 502.009(g)*

**WORKPLACE CHEMICAL LIST**

4. Compile and maintain a workplace chemical list that includes required information for each hazardous chemical normally present in the workplace or temporary workplace in excess of 55 gallons or 500 pounds, or as determined by the TDSHS for certain highly toxic or dangerous hazardous chemicals. The list shall be readily available to employees and their representatives. 

   *Health and Safety Code 502.005(a), (c)*

5. Update the list as necessary, but at least by December 31 each year, and maintain at least 30 years. Each workplace chemical list shall be dated and signed by the person responsible for compiling the information. 

   *Health and Safety Code 502.005(b), (d)*

**LABELING**

6. As required by law, label new or existing stocks of hazardous chemicals with the identity of the chemical and appropriate hazard warnings, if such stocks are not already appropriately labeled. 

   *Health and Safety Code 502.007*

**MATERIAL SAFETY DATA SHEETS**

7. Maintain a legible copy of the most current manufacturer’s material safety data sheets (MSDS) for each hazardous chemical; request such sheets from the manufacturer if not already provided or otherwise obtain a current MSDS; make such sheets readily available to employees or their representatives on request. 

   *Health and Safety Code 502.006*
PROTECTIVE EQUIPMENT

8. Provide employees with appropriate personal protective equipment. *Health and Safety Code 502.017(b)*

PEST CONTROL TREATMENT NOTICE

The chief administrator or building manager shall notify persons who work in a District building or facility of a planned pest control treatment by both of the following methods:

1. Posting the sign provided by the certified applicator or technician in an area of common access the employees are likely to check on a regular basis at least 48 hours before each planned treatment.

2. Providing the official Structural Pest Control Service Consumer Information Sheet to any individual working in the building, on request.

*Occupations Code 1951.455; 4 TAC 7.146*
The District shall maintain a drug-free environment and shall establish, as needed, a drug-free awareness program complying with federal requirements. [See DH] The program shall provide applicable information to employees in the following areas:

1. The dangers of drug use and abuse in the workplace.
2. The District’s policy of maintaining a drug-free environment. [See DH(LOCAL)]
3. Drug counseling, rehabilitation, and employee assistance programs that are available in the community, if any.
4. The penalties that may be imposed on employees for violation of drug use and abuse prohibitions. [See DI(EXHIBIT)]

All fees or charges associated with drug/alcohol abuse counseling or rehabilitation shall be the responsibility of the employee.
DRUG-FREE WORKPLACE NOTICE

The District prohibits the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances, illegal drugs, inhalants, and alcohol in the workplace.

Employees who violate this prohibition shall be subject to disciplinary sanctions. Sanctions may include:

- Referral to drug and alcohol counseling or rehabilitation programs;
- Referral to employee assistance programs;
- Termination from employment with the District; and
- Referral to appropriate law enforcement officials for prosecution.

As a condition of employment, an employee shall:

- Abide by the terms of this notice; and
- Notify the Superintendent, in writing, if the employee is convicted for a violation of a criminal drug statute occurring in the workplace. The employee must provide the notice in accordance with DH(LOCAL).

[This notice complies with the requirements of the federal Drug-Free Workplace Act (41 U.S.C. 702).]
Note: This policy addresses harassment of District employees. For legally referenced material relating to discrimination and retaliation, see DAA(LEGAL). For harassment of students, see FFH. For reporting requirements related to child abuse and neglect, see FFG.

OFFICIAL OPPRESSION

A public official commits a Class A misdemeanor if, while acting in his or her official or employment capacity, the official intentionally subjects another to unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, submission to which is made a term or condition of a person’s exercise or enjoyment of any right, privilege, power, or immunity, either explicitly or implicitly. Penal Code 39.03

HARASSMENT OF EMPLOYEES

Harassment on the basis of a protected characteristic is a violation of the federal anti-discrimination laws. The District has an affirmative duty, under Title VII, to maintain a working environment free of harassment on the basis of sex, race, color, religion, and national origin. 42 U.S.C. 2000e, et seq.; 29 CFR 1606.8(a), 1604.11

Harassment violates Title VII if it is sufficiently severe and pervasive to alter the conditions of employment. Pennsylvania State Police v. Suders, 542 U.S. 129 (2004)

Title VII does not prohibit all verbal and physical harassment in the workplace. For example, harassment between men and women is not automatically unlawful sexual harassment merely because the words used have sexual content or connotations. Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75 (1998)

Verbal or physical conduct based on a person’s sex, race, color, religion, or national origin constitutes unlawful harassment when the conduct:

1. Has the purpose or effect of creating an intimidating, hostile, or offensive working environment;

2. Has the purpose or effect of unreasonably interfering with an individual’s work performance; or

3. Otherwise adversely affects an individual’s employment opportunities.


QUID PRO QUO

Conduct of a sexual nature also constitutes harassment when:
1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment; or

2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting the individual.

29 CFR 1604.11(a)

SAME-SEX SEXUAL HARASSMENT


HARASSMENT POLICY

The District should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate penalties, informing employees of their right to raise and how to raise the issue of harassment under Title VII, and developing methods to sensitize all concerned. 29 CFR 1604.11(f)

CORRECTIVE ACTION

The District is responsible for acts of unlawful harassment by fellow employees and by nonemployees if the District, its agents, or its supervisory employees knew or should have known of the conduct, unless the District takes immediate and appropriate corrective action. 29 CFR 1604.11(d), (e), 1606.8(d), (e)

When no tangible employment action is taken, the District may raise the following affirmative defense:

1. That the District exercised reasonable care to prevent and promptly correct any harassing behavior; and

2. That the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.

**STATEMENT OF NONDISCRIMINATION**

The District prohibits discrimination, including harassment, against any employee on the basis of race, color, religion, gender, sexual orientation, national origin, age, disability, or any other basis prohibited by law. Retaliation against anyone involved in the complaint process is a violation of District policy.

**DISCRIMINATION**

Discrimination against an employee is defined as conduct directed at an employee on the basis of race, color, religion, gender, sexual orientation, national origin, age, disability, or any other basis prohibited by law, that adversely affects the employee's employment.

**HARASSMENT**

Prohibited harassment of an employee is defined as physical, verbal, or nonverbal conduct based on an employee's race, color, religion, gender, sexual orientation, national origin, age, disability, or any other basis prohibited by law, when the conduct is so severe, persistent, or pervasive that the conduct:

1. Has the purpose or effect of unreasonably interfering with the employee's work performance;
2. Creates an intimidating, threatening, hostile, or offensive work environment; or
3. Otherwise adversely affects the employee's performance, environment, or employment opportunities.

**EXAMPLES**

Examples of prohibited harassment may include offensive or derogatory language directed at another person's religious beliefs or practices, accent, skin color, gender identity, or need for workplace accommodation; threatening or intimidating conduct; offensive jokes, name-calling, slurs, or rumors; physical aggression or assault; display of graffiti or printed material promoting racial, ethnic, or other stereotypes; or other types of aggressive conduct such as theft or damage to property.

**SEXUAL HARASSMENT**

Sexual harassment is a form of sex discrimination defined as unwanted sexual advances; requests for sexual favors; sexually motivated physical, verbal, or nonverbal conduct; or other conduct or communication of a sexual nature when:

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**Note:** This policy addresses discrimination, harassment, and retaliation involving District employees. In this policy, the term “employees” includes former employees and applicants for employment. For discrimination, harassment, and retaliation involving students, see FFH. For reporting requirements related to child abuse and neglect, see FFG.
1. Submission to the conduct is either explicitly or implicitly a condition of an employee’s employment, or when submission to or rejection of the conduct is the basis for an employment action affecting the employee; or

2. The conduct is so severe, persistent, or pervasive that it has the purpose or effect of unreasonably interfering with the employee’s work performance or creates an intimidating, threatening, hostile, or offensive work environment.

**Examples of sexual harassment** may include sexual advances; touching intimate body parts; coercing or forcing a sexual act on another; jokes or conversations of a sexual nature; and other sexually motivated conduct, communication, or contact.

**The District prohibits retaliation** against an employee who makes a claim alleging to have experienced discrimination or harassment, or another employee who, in good faith, makes a report, serves as a witness, or otherwise participates in an investigation.

An employee who intentionally makes a false claim, offers false statements, or refuses to cooperate with a District investigation regarding harassment or discrimination is subject to appropriate discipline.

**Examples of retaliation** may include termination, refusal to hire, demotion, and denial of promotion. Retaliation may also include threats, unjustified negative evaluations, unjustified negative references, or increased surveillance.

**In this policy**, the term “prohibited conduct” includes discrimination, harassment, and retaliation as defined by this policy, even if the behavior does not rise to the level of unlawful conduct.

An employee who believes that he or she has experienced prohibited conduct or believes that another employee has experienced prohibited conduct should immediately report the alleged acts. The employee may report the alleged acts to his or her supervisor or campus principal.

Alternatively, the employee may report the alleged acts to one of the District officials below.

**For the purposes of this policy**, District officials are the Title IX coordinator, the ADA/Section 504 coordinator, and the Superintendent.

**Reports of discrimination based on sex**, including sexual harassment, may be directed to the Title IX coordinator. The District de-
signates the following person to coordinate its efforts to comply with Title IX of the Education Amendments of 1972, as amended:

Name: Eloy Chapa
Position: Executive Director of Human Resources
Address: 102 Profit Drive, Victoria, TX 77901
Telephone: (361) 576-3131

Reports of discrimination based on disability may be directed to the ADA/Section 504 coordinator. The District designates the following person to coordinate its efforts to comply with Title II of the Americans with Disabilities Act of 1990, as amended, which incorporates and expands upon the requirements of Section 504 of the Rehabilitation Act of 1973, as amended:

Name: Eloy Chapa
Position: Executive Director of Human Resources
Address: 102 Profit Drive, Victoria, TX 77901
Telephone: (361) 576-3131

The Superintendent shall serve as coordinator for purposes of District compliance with all other antidiscrimination laws.

An employee shall not be required to report prohibited conduct to the person alleged to have committed it. Reports concerning prohibited conduct, including reports against the Title IX coordinator or ADA/Section 504 coordinator, may be directed to the Superintendent.

A report against the Superintendent may be made directly to the Board. If a report is made directly to the Board, the Board shall appoint an appropriate person to conduct an investigation.

Reports of prohibited conduct shall be made as soon as possible after the alleged act or knowledge of the alleged act. A failure to promptly report may impair the District’s ability to investigate and address the prohibited conduct.

Any District supervisor who receives a report of prohibited conduct shall immediately notify the appropriate District official listed above and take any other steps required by this policy.

The District may request, but shall not insist upon, a written report. If a report is made orally, the District official shall reduce the report to written form.
Upon receipt or notice of a report, the District official shall determine whether the allegations, if proven, would constitute prohibited conduct as defined by this policy. If so, the District official shall immediately authorize or undertake an investigation, regardless of whether a criminal or regulatory investigation regarding the same or similar allegations is pending.

If appropriate, the District shall promptly take interim action calculated to prevent prohibited conduct during the course of an investigation.

The investigation may be conducted by the District official or a designee, such as the campus principal, or by a third party designated by the District, such as an attorney. When appropriate, the campus principal or supervisor shall be involved in or informed of the investigation.

The investigation may consist of personal interviews with the person making the report, the person against whom the report is filed, and others with knowledge of the circumstances surrounding the allegations. The investigation may also include analysis of other information or documents related to the allegations.

Absent extenuating circumstances, the investigation should be completed within ten District business days from the date of the report; however, the investigator shall take additional time if necessary to complete a thorough investigation.

The investigator shall prepare a written report of the investigation. The report shall be filed with the District official overseeing the investigation.

If the results of an investigation indicate that prohibited conduct occurred, the District shall promptly respond by taking appropriate disciplinary or corrective action reasonably calculated to address the conduct.

The District may take action based on the results of an investigation, even if the conduct did not rise to the level of prohibited or unlawful conduct.

To the greatest extent possible, the District shall respect the privacy of the complainant, persons against whom a report is filed, and witnesses. Limited disclosures may be necessary in order to conduct a thorough investigation and comply with applicable law.

A complainant who is dissatisfied with the outcome of the investigation may appeal through DGBA(LOCAL), beginning at the appropriate level.
The complainant may have a right to file a complaint with appropriate state or federal agencies.

RECORDS RETENTION
Copies of reports alleging prohibited conduct, investigation reports, and related records shall be maintained by the District for a period of at least three years. [See CPC]

ACCESS TO POLICY
This policy shall be distributed annually to District employees. Copies of the policy shall be readily available at each campus and the District administrative offices.
The District may not employ a person as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or counselor unless the person holds an appropriate certificate or permit. In addition, a public school employee must have the appropriate credentials, as set forth by the State Board for Educator Certification (SBEC), for his or her current assignment, unless the appropriate permit has been issued. *Education Code 21.003; 19 TAC 230.601 [See DBA]*

**Note:** Certification requirements for personnel assigned to various District positions are available at [http://info.sos.state.tx.us/fids/201004175-1.pdf](http://info.sos.state.tx.us/fids/201004175-1.pdf).

A superintendent or designee who cannot secure an appropriately certified and qualified individual to fill a vacant position may activate an emergency permit for an individual who does not have one of the appropriate credentials for the assignment.

The District is not required to activate an emergency permit if an uncertified individual is assigned for a certified teacher who will be absent for more than 30 consecutive instructional days due to documented health-related reasons and has expressed the intention to return to the assignment. The District must, however, comply with the parent notification requirements below.

*19 TAC 230.501(b), (g)*

A degreed, certified teacher employed in the previous year or semester in an assignment for which he or she was fully certified may not be assigned to a position that requires activating an emergency permit unless:

1. The teacher has given written consent to the activation of the permit; or

2. Because of fluctuations in enrollment or changes in course offerings, the teacher’s previous assignment no longer exists and no alternative assignment for which the teacher is fully certified is available on that campus. If a permit is activated for a teacher under these circumstances, the teacher shall be offered the opportunity to return to his or her previous assignment or an alternative assignment for which the teacher is fully certified on that campus as soon as such an assignment is available. If a teacher accepts the assignment, the actual transfer of duties shall occur not later than the beginning of the next academic year.
If an emergency permit is activated for a temporary staffing condition within 30 days of the opening of the school year or later during the contract year, the teacher is exempt from the requirement to complete additional coursework or examination requirements for certification for the remainder of the contract year for which the permit is activated. This exemption is not renewable, and a teacher continuing on an emergency permit for a second year must meet the full requirements of an emergency permit.

A teacher who refuses to consent to activation of an emergency permit may not be terminated or nonrenewed or otherwise retaliated against because of the teacher’s refusal to consent to the activation of the permit. However, a teacher’s refusal to consent shall not impair the District’s right to implement a necessary reduction in force or other personnel actions in accordance with local District policy.

19 TAC 230.501(c)

The principal of a campus shall approve all teacher and staff appointments for the campus from a pool of applicants selected by the District or of applicants who meet the hiring requirements established by the District, based on criteria developed by the principal after informal consultation with the faculty. The Superintendent or designee has final placement authority for a teacher transferred because of enrollment shifts or program changes. Education Code 11.202; Atty. Gen. Op. DM-27 (1991)

The District’s employment policy may include a provision for providing each current District employee with an opportunity to participate in a process for transferring to another school in or position with the District. Education Code 11.1513(c)(3)

Note: In accordance with Education Code 21.057, the following notice requirements do not apply if a school is required by the No Child Left Behind Act of 2001 to provide notice to a parent or guardian regarding a teacher who is not highly qualified, provided the school gives notice as required by that Act. [See DBA]

If the District assigns an inappropriately certified or uncertified teacher (as defined below) to the same classroom for more than 30 consecutive instructional days during the same school year, it shall provide written notice of the assignment to the parents or guardians of each student in that classroom.

The Superintendent shall provide the notice not later than the 30th instructional day after the date of the assignment of the inappro-
priately certified or uncertified teacher. The District shall make a good-faith effort to ensure that the notice is provided in a bilingual form to any parent or guardian whose primary language is not English. The District shall retain a copy of the notice and make information relating to teacher certification available to the public on request.

An “inappropriately certified or uncertified teacher” includes an individual serving on an emergency certificate or an individual who does not hold any certificate or permit. It does not include an individual who is:

1. Certified and assigned to teach a class or classes outside his or her area of certification, as determined by SBEC rules specifying the certificate required for an assignment;
2. Serving on a certificate issued due to a hearing impairment;
3. Serving on a certificate issued pursuant to enrollment in an approved alternative certification program;
4. Certified by another state or country and serving on a certificate issued under Education Code 21.052;
5. Serving on a school district teaching permit; or
6. Employed under a waiver granted by the Commissioner.

*Education Code 21.057; 19 TAC 231.1*
All personnel are employed subject to assignment and reassignment by the Superintendent or designee when the Superintendent determines that the assignment or reassignment is in the best interest of the District. Reassignment shall be defined as a transfer to another position, department, or facility that does not necessitate a change in the employment contract of a contract employee. Any change in an employee’s contract shall be in accordance with policy DC.

Any employee may request reassignment within the District to another position for which he or she is qualified.

The principal’s criteria for approval of campus assignments and reassignments shall be consistent with District policy regarding equal opportunity employment, and with staffing patterns approved in the District and campus plans. [See BQ series] In exercising their authority to approve assignments and reassignments, principals shall work cooperatively with the central office staff to ensure the efficient operation of the District as a whole.

Except as provided in this policy, the District shall not assign an employee to a position in which the immediate supervisor is related to the employee.

A professional employee seeking employment with the District may be assigned to a campus on which the immediate supervisor is a relative, providing there is no other position available in the District for which the employee is qualified. The District shall have the option to reassign the employee to a similar position within the District when a vacancy becomes available.

Under no circumstances shall paraprofessional or auxiliary employees be assigned to a position in which the supervisor is related to the employee.

Noncontractual supplemental duties for which supplemental pay is received may be discontinued by either party at any time. An employee who wishes to relinquish a paid supplemental duty may do so by notifying the Superintendent or designee in writing. Paid supplemental duties are not part of the District’s contractual obligation to the employee, and an employee shall hold no expectation of continuing assignment to any paid supplemental duty.

Subject to the Board-adopted budget and compensation plan and in harmony with employment contracts, the Superintendent shall determine required work calendars for all employees. [See DC, EB]

Daily time schedules for all employees shall be determined by the Superintendent or designee and principals.
PLANNING AND PREPARATION

Each classroom teacher is entitled to at least 450 minutes in each two-week period for instructional preparation including parent-teacher conferences, evaluating students’ work, and planning. A planning and preparation period may not be less than 45 minutes within the instructional day. During that time, a teacher may not be required to participate in any other activity. Education Code 21.404 [See DEAB(LEGAL) for definition of classroom teacher]

DUTY-FREE LUNCH

Each classroom teacher or full-time librarian is entitled to at least a 30-minute lunch period free from all duties and responsibilities connected with the instruction and supervision of students. The implementation of this requirement may not result in a lengthened school day. Education Code 21.405 [See DEAB(LEGAL) for definitions of classroom teacher and librarian]

EXCEPTION

If necessary because of a personnel shortage, extreme economic conditions, or unavoidable or unforeseen circumstances, the District may require a classroom teacher or librarian to supervise students during lunch. A classroom teacher or librarian may not be required to supervise students under this exception more than one day in any school week. Education Code 21.405

In determining whether an exceptional circumstance exists, the District shall use the following guidelines:

1. A personnel shortage exists when, despite reasonable efforts to use nonteaching personnel or the assistance of community volunteers to supervise students during lunch, no other personnel are available.

2. Extreme economic conditions exist when the percentage of a local tax increase, including the cost of implementing duty-free lunch requirements, would place the District in jeopardy with respect to a potential roll-back election.

3. Unavoidable or unforeseen circumstances exist when, because of illness, epidemic, or natural or man-made disaster, the District is unable to find individuals to supervise students during lunch.

19 TAC 153.1001
RESTRICTIONS ON WRITTEN REPORTS

The Board shall limit redundant requests for information and the number and length of written reports that a classroom teacher is required to prepare.

A classroom teacher may not be required to prepare any written information other than:

1. Any report concerning the health, safety, or welfare of a student;
2. A report of a student's grade on an assignment or examination;
3. A report of a student's academic progress in a class or course;
4. A report of a student's grades at the end of each grade reporting period;
5. A report on instructional materials;
6. A unit or weekly lesson plan that outlines, in a brief and general manner, the information to be presented during each period at the secondary level or in each subject or topic at the elementary level;
7. An attendance report;
8. Any report required for accreditation review;
9. Any information required by the District that relates to a complaint, grievance, or actual or potential litigation and that requires the classroom teacher's involvement; or
10. Any information specifically required by law, rule, or regulation.

The District may collect essential information, in addition to the information specified above, from a classroom teacher on agreement between the classroom teacher and the District.

PAPERWORK REVIEW

The Board shall review paperwork requirements imposed on classroom teachers and transfer to existing noninstructional staff a reporting task that can reasonably be accomplished by that staff. [See BAA]

Education Code 11.164

The Commissioner of Education may authorize special accreditation investigations in response to repeated complaints concerning imposition of excessive paperwork requirements on classroom teachers. Education Code 39.075(b-1)
REQUIREMENTS ON WRITTEN REPORTS

Annually upon the Board’s request, the Superintendent shall report to the Board on efforts to minimize teacher paperwork and on the number and length of written reports that teachers are required to prepare.
STAFF DEVELOPMENT

Staff development shall be predominantly campus-based, related to achieving campus performance objectives, and developed and approved by the campus-level committee [see BQB].

TRAINING SPECIFICS

The staff development provided by the District must be conducted in accordance with standards developed by the District and designed to improve education in the District.

The staff development must include training, based on scientifically based research, that relates to the instruction of students with disabilities and is designed for educators who work primarily outside the area of special education. The District is required to provide such training only if the educator does not possess the knowledge and skills necessary to implement the individualized education program developed for a student receiving instruction from the educator. The District may determine the time and place at which the training is delivered. In developing or maintaining such training, the District must consult persons with expertise in research-based practices for students with disabilities, including colleges, universities, private and nonprofit organizations, regional education service centers, qualified District personnel, and any other persons identified as qualified by the District.

The staff development may include:

1. Training in technology, conflict resolution, and discipline strategies, including classroom management, District discipline policies, and the Student Code of Conduct; and

2. Instruction as to what is permissible under law, including opinions of the United States Supreme Court, regarding prayer in public school.

Education Code 21.451

The District may use District-wide staff development that has been developed and approved through the District-level decision process. Education Code 21.452(c)

CHILD ABUSE AND MALTREATMENT

The District’s methods for increasing awareness of issues regarding sexual abuse and other maltreatment of children [see BQ, District Improvement Plan, and FFG] must address employee training.

The training must be provided as part of a new employee orientation to new educators, including counselors and coaches, and other professional employees. The training may be provided annually to any employee. The training may be included in staff development under Education Code 21.451.

The training shall address:...
1. Factors indicating a child is at risk for sexual abuse or other maltreatment;

2. Likely warning signs indicating a child may be a victim of sexual abuse or other maltreatment;

3. Internal procedures for seeking assistance for a child who is at risk for sexual abuse or other maltreatment, including referral to a school counselor, a social worker, or another mental health professional;

4. Techniques for reducing a child’s risk of sexual abuse or other maltreatment; and

5. Community organizations that have relevant existing research-based programs and that are able to provide training or other education for employees, students, and parents.

The District shall maintain records of the training that include the name of each employee who participated.

If the District determines that the District does not have sufficient resources to provide the required training, the District shall work with a community organization to provide the training at no cost to the District.

_Education Code 38.0041_

**SPECIAL PROGRAMS TRAINING**

**TITLE I STAFF DEVELOPMENT**

A district that receives assistance under Title I, Part A, shall include in its plan [see AID] a description of the strategy the district will use to provide professional development for teachers and principals, and, if appropriate, pupil services personnel, administrators, parents and other staff, including district staff, in accordance with 20 U.S.C. 6318 and 6319 (No Child Left Behind Act). _20 U.S.C. 6312(b)(1)(D), 7801(34)_

**READING ACADEMIES**

A teacher shall attend a reading academy under 19 Administrative Code 102.1101 if:

1. The teacher teaches at a campus that fails to satisfy any performance standard under Education Code 39.054(d) [see AIA] on the basis of student performance on the state reading assessment instrument administered to students in any grade level at the campus; and

2. The teacher teaches in general education, special education, or English as a second language for students in grade 6, 7, or 8, and:

   a. The teacher is a certified, full-time English language arts and reading teacher who instructs English language arts
and/or reading for at least 50 percent of the teacher’s instructional duties; or

b. The teacher is a certified, full-time content area teacher who instructs mathematics, science, and/or social studies for at least 50 percent of the teacher’s instructional duties.

From funds appropriated for this purpose, a teacher who attends a reading academy is entitled to a stipend in the amount determined by the Commissioner. The stipend shall not be considered in determining whether the District is paying the teacher the state minimum monthly salary [see DEAB].

*Education Code 21.4551(c), (e); 19 TAC 102.1101(b)*

The District shall ensure that:

1. Before assignment to the program for gifted students, teachers who provide instruction and services that are part of the program have a minimum of 30 hours of staff development that includes nature and needs of gifted/talented students, assessment of student needs, and curriculum and instruction for gifted students.

2. Teachers without the required training who provide instruction and services that are part of the gifted/talented program complete the 30-hour training requirement within one semester.

3. Teachers who provide instruction and services that are part of a program for gifted students receive a minimum of six hours annually of professional development in gifted education.

4. Administrators and counselors who have authority for program decisions have a minimum of six hours of professional development that includes nature and needs of gifted/talented students and program options.

*19 TAC 89.2*

A teacher of an elective Bible course offered under Education Code 28.011 [see EMI] must hold a minimum of a High School Composite Certification in language arts, social studies, or history with, where practical, a minor in religious or biblical studies. The teacher must successfully complete the staff development training developed by the Commissioner with respect to Bible elective courses. *Education Code 28.011(f)*

ADULT EDUCATION

All adult education staff shall receive at least 12 clock hours of professional development annually. All staff new to adult education shall receive six clock hours of preservice professional develop-
Directors, teachers, counselors, and supervisors who do not have valid Texas teacher certification must attend 12 clock hours of in-service professional development annually in addition to the 12 hours required above until they have completed either six clock hours of adult education college credit or attained two years of adult education experience. 19 TAC 89.25(4)(B)

The in-service professional development requirements may be reduced by local programs in individual cases where exceptional circumstances prevent employees from completing the required hours of in-service professional development. Documentation justifying such circumstances must be kept. Requests for exemption in individual cases may be submitted to TEA for approval in the application for funding and must include justification and proposed qualification. 19 TAC 89.25(5)

The above requirements also apply to volunteers who generate student contact time that is accrued by the adult education program and reported to TEA for funding purposes. 19 TAC 89.25(7)

Records of staff qualifications and professional development shall be maintained by the District and must be available for monitoring. 19 TAC 89.25(6)

(The District shall annually make available to employees and volunteers instruction in the principles and techniques of cardiopulmonary resuscitation and the use of an automated external defibrillator (AED).

The instruction provided in the use of AEDs must meet guidelines for approved AED training under Health and Safety Code 779.002. Each school nurse, assistant school nurse, athletic coach or sponsor, physical education instructor, marching band director, cheerleading coach, and any other employee specified by the Commissioner, and each student who serves as an athletic trainer, must:

1. Participate in the instruction;
2. Receive and maintain certification in the use of an AED from the American Heart Association, the American Red Cross, or a similar nationally recognized association.

*Education Code 22.902*

The following persons must satisfactorily complete the extracurricular safety training program developed by the Commissioner:

1. A coach or sponsor for an extracurricular athletic activity;
2. A trainer, unless the trainer has completed the educational requirements for licensure as a licensed athletic trainer set forth at 22 Administrative Code 871.7 and the continuing education requirements at 22 Administrative Code 871.12;

3. A physician who is employed by the District or who volunteers to assist with an extracurricular athletic activity, unless the physician attends a continuing medical education course that specifically addresses emergency medicine; and

4. A director responsible for a school marching band.

The training may be conducted by the District, the American Red Cross, the American Heart Association, or a similar organization, or by the University Interscholastic League (UIL).

*Education Code 33.202(b), (f); 19 TAC 76.1003*

**RECORDS**

The Superintendent shall maintain complete and accurate records of the District’s compliance and the District shall make available to the public proof of compliance for each person employed by or volunteering for the District who is required to receive safety training.

A campus that is determined by the Superintendent to be out of compliance with the safety training requirements shall be subject to the range of penalties determined by the UIL.

*Education Code 33.206; 19 TAC 76.1003(e)*

**STEROIDS**

The District shall require that each employee who serves as an athletic coach at or above the seventh grade level for an extracurricular athletic activity sponsored or sanctioned by the UIL complete:

1. The educational program developed by the UIL regarding the health effects of steroids; or

2. A comparable program developed by the District or a private entity with relevant expertise.

*Education Code 33.091(c-1)*

**CONCUSSIONS**

At least once every two years, the following employees shall take a training course from an authorized provider in the subject matter of concussions:

1. A coach of an interscholastic athletic activity shall take a course approved by the UIL.

2. An athletic trainer who serves as a member of the District’s concussion oversight team shall take a course approved by the Texas Department of State Health Services Advisory Board of Athletic Trainers (TDSHS-ABAT) or a course ap-
proved for continuing education credit by the licensing authority for athletic trainers.

3. A licensed health-care professional, other than an athletic trainer, who serves as a member of the District’s concussion oversight team shall take a course approved by the UIL, TDSHS-ABAT, or the appropriate licensing authority for the profession.

The employee must submit proof of timely completion of an approved course to the Superintendent or designee. A licensed health-care professional who is not in compliance with these training requirements may not serve on a concussion oversight team in any capacity. [See FM]

*Education Code 38.158*

RESOURCES FOR STAFF DEVELOPMENT

If the District receives resources from the Commissioner’s staff development account, it must pay to the Commissioner for deposit in the account an amount equal to one-half of the cost of the resources provided to the District. *Education Code 21.453*
MEETINGS, CONFERENCES, AND WORKSHOPS

Professional personnel may attend and participate in meetings, conferences, and workshops that will contribute to their professional growth and development. [See also DMA and DMC]

When attendance at such events is recommended or required by the administration, the Board, TEA, or UIL, personnel may attend with the approval of the Superintendent or designee. No salary deduction or loss of leave shall occur when attendance is recommended or required.

The Superintendent may grant additional absences to employees for attendance at meetings, conferences, and workshops that are of special interest to the employee.

RELEASE TIME

Requests for release time with pay to attend employee organization meetings, other than any such meetings approved for required staff development purposes, shall be considered on a case-by-case basis. The responsibility for justifying the school-related purpose to be accomplished by attendance shall rest with the employee. Approval shall be given only if the employee is on the program, has some official function, or can obtain specific information related to his or her job description that will assist the District in improving the instructional program.
GENERAL PRINCIPLES

All District employees shall be periodically appraised in the performance of their duties. The District’s employee evaluation and appraisal system shall be administered consistent with the general principles set out below.

CRITERIA

The employee’s performance of assigned duties and other job-related criteria shall provide the basis for the employee’s evaluation and appraisal. Employees shall be informed of the criteria on which they will be evaluated.

PERFORMANCE REVIEW

Evaluation and appraisal ratings shall be based on the evaluation instrument and cumulative performance data gathered by supervisors throughout the year. Each employee shall have at least one evaluative conference annually, except as otherwise provided by policy, to discuss the written evaluation and may have as many conferences about performance of duties as the supervisor deems necessary. [See also DNA and DNB]

DOCUMENTATION AND RECORDS

Appraisal records and forms, reports, correspondence, and memoranda may be placed in each employee's personnel records to document performance.

EMPLOYEE COPY

All employees shall receive a copy of their annual written evaluation.

COMPLAINTS

Employees may present complaints regarding the evaluation and appraisal process in accordance with the District's complaint policy for employees. [See DGBA]
Except as provided below, each teacher must be appraised at least once during each school year. *Education Code 21.203, 21.352(c); 19 TAC 150.1003(a)*

A teacher may be appraised less frequently if the teacher agrees in writing and the teacher’s most recent evaluation rated the teacher as at least proficient, or the equivalent, and did not identify any area of deficiency. A teacher who is appraised less frequently than annually must be appraised at least once during each period of five school years. *Education Code 21.352(c)*

For purposes of the Professional Development and Appraisal System (PDAS), an area of deficiency is a domain. A teacher must be rated as at least proficient for each domain (that is, for all domains) to be eligible for less frequent appraisals.

District policy may stipulate:

1. Whether the exception is to be made available to all teachers;
2. Whether the exception is to be adopted Districtwide or is to be campus specific;
3. If the appraisal accompanying a teacher new to the District or campus meets the requirements for the exception, whether the appraisal is to be accepted or whether that teacher is to be appraised by the new campus administrator; and
4. Whether a certified appraiser may place a teacher on the traditional appraisal cycle as a result of performance deficiencies documented by cumulative data, including third-party information.

The District may choose annually to review the written agreement with the teacher. However, at the end of the school year, the District may modify exceptions through Board policy and may make changes to expectations for appraisals that apply to all teachers regardless of a teacher’s participation in the appraisal option in the previous years. *19 TAC 150.1003(l)*

A teacher who directs extracurricular activities in addition to performing classroom teaching duties shall be appraised only on the basis of classroom teaching performance and not on performance in connection with extracurricular activities. *Education Code 21.353*

The District shall maintain a written copy of the evaluation of each teacher’s performance in the teacher’s personnel file.
Each teacher is entitled to receive a written copy of the evaluation on its completion. The evaluation and any rebuttal may be given to another school district at which the teacher has applied for employment at the request of that district.

*Education Code 21.352(c)*

**CONFIDENTIALITY**


**CHOICE OF APPRAISAL METHOD**

The District shall use one of the following methods to appraise teachers:

1. The appraisal process and performance criteria developed by the Commissioner [see STATE METHOD, below]; or

2. A locally developed appraisal process and performance criteria [see DISTRICT OPTION and CAMPUS OPTION, below].

*Education Code 21.352(a); 19 TAC 150.1001(a)*

**SELECTION OF APPRAISAL METHOD**

The Superintendent, with the approval of the Board, may select the state appraisal method. Each district or campus wanting to select or develop an alternative teacher-appraisal system must follow the requirements set forth below at DISTRICT OPTION or CAMPUS OPTION. *19 TAC 150.1001(c)*

**INFORMATION TO SERVICE CENTER**

The Superintendent shall notify the executive director of the District's regional education service center of the District's choice of appraisal system(s), by a time designated by the Commissioner.

The District shall submit annually to its service center, in a manner prescribed by the Commissioner, a summary of the evaluation scoring from all campuses in the District.

*19 TAC 150.1010*

**Note:** The following provisions apply to teacher appraisal using the state appraisal method.

**STATE METHOD (PDAS)**

The state appraisal method is the Professional Development and Appraisal System. The foundation for the PDAS is the teacher proficiencies described in *Learner-Centered Schools for Texas: A Vision of Texas Educators.* *19 TAC 150.1001(b), 150.1002(a)*

**ORIENTATION AND ANNUAL REVIEW**

The District shall ensure that all teachers are provided with an orientation to the PDAS. The orientation shall be provided no later than the final day of the first three weeks of school and at least three weeks before the first observation. Additional orientations shall be provided any time substantial changes occur in the PDAS.
The orientation shall include materials approved by the Commissioner.

In addition, at least three weeks before the first formal observation, all teachers to be appraised shall be provided an annual review of District policy regarding teacher appraisal and of 19 Administrative Code Chapter 150, Subchapter AA (Teacher Appraisal).

19 TAC 150.1007

The teacher appraisal process requires at least one certified appraiser.

A campus administrator who is a certified PDAS appraiser and approved by the Board shall conduct a teacher’s appraisal. For the purposes of PDAS, a “campus administrator” includes a principal, an assistant principal, or other supervisory staff designated as an administrator who holds a comparable administrator/supervisor certificate established by the State Board for Educator Certification. Only in the event of the circumstances described below at SAME CAMPUS may an individual other than a campus administrator act as a certified appraiser.

A certified appraiser who is a classroom teacher may not appraise another classroom teacher at the same campus unless it is impractical because of the number of campuses or unless the appraiser is the chair of a department or grade-level whose job description includes classroom observation responsibilities.

Before conducting appraisals, an appraiser must be certified by having satisfactorily completed uniform appraiser training. Periodic recertification and training shall be required.

Education Code 21.351(c); 19 TAC 150.1006

The District shall establish a calendar for teacher appraisals. The appraisal period for each teacher must include all of the days of the teacher’s contract.

Observations during the appraisal period must be conducted during the required days of instruction for students during one school year.

The calendar shall:

1. Exclude observations in the three weeks after the day of completion of the PDAS orientation in the school years when an orientation is required;
2. Exclude observations in the three weeks after the day of completion of the PDAS orientation for teachers new to the PDAS;

3. Exclude observations in the first three weeks of instruction in the school years when the PDAS orientation is not required;

4. Prohibit observations on the last day of instruction before any official school holiday or on any other day deemed inappropriate by the Board; and

5. Indicate a period for summative annual conferences that ends no later than 15 working days before the last day of instruction for students.

19 TAC 150.1003(d)

A teacher may be given advance notice of the date or time of an appraisal, but advance notice is not required. Education Code 21.352(d); 19 TAC 150.1003(c)

APPRAISAL PROCESS
The annual appraisal shall include:

1. At least one classroom observation of a minimum of 45 minutes, with additional walk-throughs and observations conducted at the discretion of the appraiser;

2. Completion of Section I of the Teacher Self-Report Form that shall be presented to the principal;

3. Cumulative data of written documentation collected regarding job-related teacher performance, in addition to formal classroom observations; and

4. A written summative annual appraisal report and a summative annual conference, described below.

19 TAC 150.1003(b)

SUMMATIVE REPORT
A written summative annual appraisal report shall be shared with the teacher no later than five working days before the summative conference and no later than 15 working days before the last day of instruction for students. The written summative annual appraisal report shall be placed in the teacher’s personnel file by the end of the appraisal period. 19 TAC 150.1003(h)

SUMMATIVE CONFERENCE
Unless waived in writing by the teacher, a summative conference shall be held within a time frame specified on the District calendar and no later than 15 working days before the last day of instruction for students. The summative conference shall focus on the written summative report and related data sources. 19 TAC 150.1003(i)
A teacher may submit a written response or rebuttal after receiving a written observation summary, summative annual appraisal report, and/or any other documentation associated with the teacher’s appraisal. The rebuttal is to be attached to the evaluation in the teacher’s personnel file. Education Code 21.352(c); 19 TAC 150.1005(a)

A teacher may request a second appraisal by another certified appraiser after receiving a written observation summary and/or a written summative annual appraisal report. Education Code 21.352(c); 19 TAC 150.1005(c)

The District shall adopt written procedures for determining the selection of second appraisers. The procedures shall be disseminated to each teacher at the time of employment and updated annually or as needed. 19 TAC 150.1005(g)

A teacher whose performance meets one of the following circumstances will be designated a “teacher in need of assistance”:

1. A teacher who is evaluated as unsatisfactory in one or more domains; or

2. A teacher who is evaluated as below expectations in two or more domains.

When a teacher is designated as in need of assistance, the certified appraiser and the teacher’s supervisor shall, in consultation with the teacher, develop an intervention plan. A teacher who has not met all requirements of the intervention plan by the time specified may be considered for separation from the assignment, campus, and/or District.

An intervention plan may be developed at any time at the discretion of the certified appraiser when the certified appraiser has documentation that would potentially produce an evaluation rating of “below expectations” or “unsatisfactory.”

19 TAC 150.1004

The District shall adopt written procedures for a teacher to present grievances and receive written comments in response to the written annual report. 19 TAC 150.1005(g)

Note: The following provisions apply to teacher appraisal using the District-developed appraisal method.

A district that does not want to use the PDAS must develop its own teacher-appraisal system supported by locally adopted policy and procedures and by the processes outlined below.
The Texas Teacher Appraisal System (TTAS) is no longer a state-recommended system. However, the TTAS may be used as a local option governed by the process outlined below. If adopted as a local option, the TTAS must be modified to comply with Education Code 21.351(a)(1) and (2). [See APPRAISAL PROCESS, below]

**DEVELOPMENT OF APPRAISAL SYSTEM**

The District-level planning and decision-making committee shall:

1. Develop an appraisal process;
2. Develop evaluation criteria, including discipline management and performance of the teachers' students; and
3. Consult with the campus-planning and decision-making committee on each campus in the District.

**APPRAISAL PROCESS**

The appraisal process shall include:

1. At least one appraisal each year;
2. A conference between the teacher and the appraiser that is diagnostic and prescriptive with regard to remediation needed in overall performance by category; and
3. Criteria based on observable, job-related behavior, including:
   a. Teachers' implementation of discipline management procedures; and
   b. Performance of the teachers' students.

**BOARD ACCEPTANCE**

The District-level planning and decision-making committee shall submit the appraisal process and criteria to the Superintendent, who shall submit the appraisal process and criteria to the Board with a recommendation to accept or reject.

The Board may accept or reject, with comments, the appraisal process and performance criteria, but may not modify the process or criteria.

_Education Code 21.352(a)(2), (b); 19 TAC 150.1009(a)_

**Note:** The following provisions apply to teacher appraisal using the campus-developed appraisal method.

**CAMPUS OPTION**

A campus within the District may choose to develop a local appraisal system.

**DEVELOPMENT OF APPRAISAL SYSTEM**

The campus planning and decision-making committee shall:

1. Develop an appraisal process;
2. Develop evaluation criteria, including discipline management and performance of the teachers’ students; and

3. Submit the process and criteria to the District-level planning and decision-making committee.

The appraisal process shall include:

1. At least one appraisal each year;

2. A conference between the teacher and the appraiser that is diagnostic and prescriptive with regard to remediation needed in overall performance by category; and

3. Criteria based on observable, job-related behavior, including:
   a. Teachers’ implementation of discipline management procedures; and
   b. Performance of the teachers’ students.

Upon submission of the appraisal process and criteria to the District-level planning and decision-making committee, the committee shall make a recommendation to accept or reject the appraisal process and criteria and transmit that recommendation to the Superintendent.

The Superintendent shall submit to the Board:

1. The recommended campus appraisal process and criteria;

2. The District-level planning and decision-making committee’s recommendation; and

3. The Superintendent’s recommendation.

The Board may accept or reject, with comments, an appraisal process and performance criteria, but may not modify the process or criteria.

*Education Code 21.352(a)(2), (b); 19 TAC 150.1009(b)*
PDAS WITH CAMPUS OPTIONS

The annual appraisal of District teachers shall be in accordance with the Professional Development and Appraisal System (PDAS), except for the appraisal of teachers who qualify under Education Code 21.352 (c) shall follow a campus teacher appraisal plan written in compliance with statutory provisions and Commissioner’s rules.

LESS-THAN-ANNUAL APPRAISAL OF TEACHERS

District teachers who meet the criteria listed below shall be eligible for a less-than-annual appraisal as permitted by law.

To be eligible, a teacher shall:

1. Be on an educator contract;
2. Be SBEC certified, teaching in his or her area of certification;
3. Have received an “exceeds expectations” rating in five of eight domains on PDAS and a least “proficient” in the other three domains;
4. Not be new to the campus; and
5. Have completed three years of uninterrupted service in the District.

FREQUENCY

A teacher who qualifies for a less-than-annual appraisal and who has at least three total years of service shall be scheduled for a complete PDAS appraisal every other year.

In a school year in which a teacher is not scheduled for an appraisal, either the teacher or the appraiser may request that an appraisal be conducted by providing written notice to the other party. If either party requests an appraisal during the school year in which a teacher is not scheduled for an appraisal, an appraisal shall be conducted.

ANNUAL PDAS CALENDAR

The District shall establish an appraisal calendar each year.

All formal classroom observations of teachers shall be scheduled by date and time. Teachers exempt from the annual formal appraisal shall receive a minimum of four informal observations by the appraiser during their exempt year.

ALTERNATE APPRAISERS

The list of qualified appraisers who may appraise a teacher in place of the teacher’s supervisor shall be approved by the Board.

SECOND OBSERVATION APPRAISER

Upon a teacher’s request for a second appraiser, the Superintendent or designee shall select the second appraiser from a pre-established roster of trained appraisers.
SCORES

The Board shall ensure that the Superintendent or designee establishes procedures regarding how domain scores from first and second appraisals will be used.

SCHEDULING

Second appraisals shall be scheduled by date and time.

PROBATIONARY TEACHERS

Written evaluations and other evaluative information may be considered prior to a decision to terminate a probationary contract at the end of the contract term. [See DFAB(LEGAL)]

EMPLOYMENT DECISIONS

When relevant to decisions regarding term contracts, written evaluations of a teacher's performance, as documented to date, and any other information the administration deems appropriate, shall be considered in decisions affecting contract status.

GRIEVANCES

Complaints regarding teacher appraisal shall be addressed in accordance with DGBA(LOCAL).
DEFERRED PDAS APPRAISAL AGREEMENT

Education Code 21.352 (c)

Teacher Name: _______________________________ SS# ____________________________

Campus: _____________________________ Department: ____________________________

PDAS Appraiser/Supervisor: ______________________________________________________

Based on provisions of Education Code 21.352(c), I agree to defer the annual formal observation requirement for a period of one year as eligible. My next scheduled PDAS evaluation will be during the ______________ school year.

I was rated EE on five domains (with no identified areas less than proficient) on my most recent formal PDAS evaluation conducted during the school year ____________________________.

I understand that all informal observations during the period of this waiver may be used for purposes of cumulative data in determining the rating of my performance evaluation. If cumulative data attained through informal class visits, walk-throughs, conferences, and the like, indicate any deficiency in the PDAS performance criteria, I will then be subject to an annual formal observation at the discretion of the campus principal.

I understand that during the period of this agreement, teachers exempt from the annual formal appraisal will receive informal observations by the appraiser. I also understand that informal observations during the period of this agreement may or may not be scheduled at the discretion of the appraiser. During this agreement period, I will annually complete and submit the PDAS Teacher Self-Report, Parts I–III, as well as receive a summative appraisal consisting of at least domains V–VIII.

Signature of Teacher: __________________________________________________________

Date of Agreement: ____________________________________________________________

This Deferred Appraisal Agreement is: _________ Approved _________ Denied

Signature of Appraiser: _________________________________________________________ Date: _______________________
The employment policies adopted by the Board must require a written evaluation at annual or more frequent intervals of each superintendent, principal, supervisor, counselor, or other full-time, certified professional employee, and nurse. *Education Code 21.203(a)*

The District shall appraise each administrator annually using either:

1. The Commissioner’s recommended appraisal process and performance criteria; or

2. An appraisal process and performance criteria developed by the District in consultation with the District- and campus-level committees and adopted by the Board.

District funds may not be used to pay an administrator who has not been appraised in the preceding 15 months.

*Education Code 21.354(c), (d)*

The information in the annual report describing the educational performance of each campus [see AIB] shall be a primary consideration of the Superintendent in evaluating campus principals. In addition, the appraisal of a principal shall include consideration of the student achievement indicators and the campus’s objectives, including performance gains of the campus and the maintenance of those gains. *Education Code 21.354(e)*

The Commissioner shall develop and periodically update an evaluation form for use by districts in evaluating school counselors.

A document evaluating the performance of an administrator is confidential.

*Education Code 21.355*

The following procedures for administrator appraisal are minimum requirements.

The District shall establish an annual calendar providing for the following activities, which shall involve both the administrator and the appraiser:

1. Procedures for setting goals that define expectations and set priorities for the administrator being appraised.

2. Formative conference.


*19 TAC 150.1022(a)*
The District shall involve appropriate administrators in developing, selecting, or revising the appraisal instruments and process.

Before conducting appraisals, an appraiser shall provide evidence of training in appropriate personnel evaluation skills related to the locally established criteria and process.

The District may implement a process for collecting staff input for evaluating administrators. If the District implements such a process, the input must not be anonymous.

The appraisal of a principal shall include a student performance domain. The District may, with Board approval, select the Commissioner-recommended student performance domain for principals or may develop an alternative governed by the process outlined in Education Code 21.354. [See ADMINISTRATOR APPRAISAL, above]

The domains and descriptors used to evaluate each administrator may include the following:

1. Instructional management.
2. School or organization morale.
3. School or organization improvement.
4. Personnel management.
5. Management of administrative, fiscal, and facilities functions.
6. Student management.
7. School or community relations.
8. Professional growth and development.
9. Student achievement indicators and campus performance objectives.

In developing appraisal instruments, the District shall use the local job description, as applicable.

19 TAC 150.1021, 150.1022
EMPLOYMENT DECISIONS

When relevant to the decision, written evaluations of a professional employee's performance, as documented to date, and any other information the administration determines to be appropriate shall be considered in decisions affecting contract status.

EXCEPTION

Written evaluations and other evaluative information need not be considered prior to a decision to terminate a probationary contract at the end of the contract term.
The Board, by local policy, shall adopt qualifications for principals. *Education Code 11.202(c)*

To be eligible to receive a Standard Principal Certificate, an individual must:

1. Successfully complete the educator assessments required under 19 Administrative Code 230.5.
2. Hold a master’s degree from an accredited institution of higher education.
3. Have two years of creditable teaching experience as a classroom teacher, as defined by 19 Administrative Code Chapter 230, Subchapter Y.

*19 TAC 241.25*

The principal shall be the instructional leader of the school and shall be provided with adequate training and personnel assistance to assume that role. *Education Code 11.202(a)*

The principal shall:

1. Approve all teacher and staff appointments for the campus. [See DK]
2. Set specific education objectives for the campus, through the planning process.
3. Develop budgets for the campus.
4. Assume administrative responsibility and instructional leadership, under the supervision of the Superintendent, for discipline at the campus.
5. Assign, evaluate, and promote all personnel assigned to the campus.
6. Recommend to the Superintendent the termination, suspension, or nonrenewal of an employee assigned to the campus.
7. Perform any other duties assigned by the Superintendent pursuant to Board policy.
8. Regularly consult with the campus-level committee in the planning, operation, supervision, and evaluation of the campus educational program. [See BQ series]
9. Each school year, with the assistance of the campus-level committee, develop, review, and revise the campus improvement plan. [See BQ]
10. (For high school principals only) Serve, or appoint someone to serve, as deputy registrar for the county in which the school is located. *Election Code 13.046*

*Education Code 11.202(b), .253(c), (h), 31.103(a)* [See also DMA]
In addition to the minimal certification requirement, the principal shall have at least:

1. Working knowledge of curriculum and instruction;
2. The ability to evaluate instructional program and teaching effectiveness;
3. The ability to manage budget and personnel and coordinate campus functions;
4. The ability to explain policy, procedures, and data;
5. Strong communications, public relations, and interpersonal skills;
6. Three years’ experience as a classroom teacher;
7. Prior experience in instructional leadership roles; and
8. Other qualifications deemed necessary by the Board.
If the District assigns an inappropriately certified or uncertified teacher [as defined in DBA(LEGAL)] to the same classroom for more than 30 consecutive instructional days during the same school year, it shall provide written notice of the assignment to the parents or guardians of students in that classroom.

The Superintendent shall provide the notice not later than the 30th instructional day after the date of the assignment of the inappropriately certified or uncertified teacher. The District shall make a good-faith effort to ensure that the notice is provided in a bilingual form to any parent or guardian whose primary language is not English. The District shall retain a copy of the notice and make information relating to teacher certification available to the public on request. [See also DBA(LEGAL)]

Education Code 21.057

The District shall obtain all criminal history record information that relates to a substitute teacher for the District or shared services arrangement through the Department of Public Safety’s criminal history clearinghouse. [See DBAA] Education Code 22.0836
SUBSTITUTE TEACHERS

At the beginning of each school year, the Superintendent or a designee, in cooperation with principals, shall compile a list of qualified substitute teachers available for the school year. This list shall be approved by the Superintendent and distributed to all principals. The list shall indicate each individual’s qualifications. Principals shall request and receive specific authorization from the Superintendent or designee before employing any substitute not on the approved list.

APPLICATION

Persons wishing to substitute teach in the District shall make application through usual channels. [See DC]

Approved substitutes shall have on file in the District:

1. The District’s application form.
2. A record of highest education attained, including high school diploma, GED certificate, or transcript for all college work, and/or Texas certificates.
3. Income tax withholding form.

QUALIFICATIONS

The District shall attempt to hire certified teachers as substitutes whenever possible. Generally, substitutes shall be required to have at least 60 college hours; however, no person shall be employed as a substitute who does not have at least a high school diploma or GED.

SELECTION

Principals shall give first consideration to the most qualified teachers on the approved substitute list and shall make an effort to place substitutes in their field of interest or the field in which they are best qualified.

PAY

The rates for substitute pay shall be set by the Board and recorded in Board minutes.

RESPONSIBILITIES

A substitute shall be subject to all duties of a regular classroom teacher.